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LOUISIANA USED MOTOR VEHICLE COMMISSION
STATE OF LOUISIANA

REGULAR MEETING
APRIL 20, 2015
BEGINNING AT 9:32 A.M.

3132 VALLEY CREEK
BATON ROUGE, LOUISIANA

REPORTED BY:
BETTY D. GLISSMAN, CCR

1 APPEARANCES :

2

3 CHAIRMAN :

4 MR. JOHN POTEET

5

6 COMMISSIONERS PRESENT :

7 MR. GEORGE BREWER

8 MR. TONY CORMIER

9 MR. RON DUPLESSIS

10 MR. GEORGE FLOYD

11 MR. KIRBY ROY

12 MR. HENRY "DARTY" SMITH

13 MR. DINO TAYLOR

14

15

16

17 REPRESENTING THE LOUISIANA USED MOTOR
18 VEHICLE COMMISSION :

18

19 ROBERT W. HALLACK, ESQUIRE
20 HALLACK LAW OFFICE
13007 JUSTICE AVENUE
BATON ROUGE, LOUISIANA 70816

21 SHERI MORRIS, ESQUIRE
22 ROEDEL, PARSONS, KOCH, BLACHE,
BALHOFF & McCOLLISTER
23 8440 JEFFERSON HIGHWAY, SUITE 301
BATON ROUGE, LOUISIANA 70809

24

25

1 ALSO PRESENT:

2
3 MS. KIM BARON

4 MR. DEREK PARNELL

5 MS. MONA ANDERSON

6 MS. TONYA BURKS

7 MR. MONTIE WISENOR

8 MR. NESTOR GUILLORY

9 MR. ERIC STROBERT

10 MR. DWAYNE TAMBLING

11 MR. CHARLES ANTHONY

12 MR. KEITH KIRALY

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1 (Pledge of Allegiance)

2 MR. POTEET:

3 All right. Kim, could you do the
4 roll call for us, please?

5 MS. BARON:

6 John Poteet?

7 MR. POTEET:

8 Here.

9 MS. BARON:

10 George Brewer?

11 MR. BREWER:

12 Here.

13 MS. BARON:

14 Dino Taylor?

15 MR. TAYLOR:

16 Here.

17 MS. BARON:

18 Tony Cormier?

19 MR. CORMIER:

20 Here.

21 MS. BARON:

22 Ron Duplessis?

23 MR. DUPLESSIS:

24 Here.

25 MS. BARON:

1 George Floyd?

2 MR. FLOYD:

3 Here.

4 MS. BARON:

5 Kirby Roy?

6 MR. ROY:

7 Here.

8 MS. BARON:

9 Darty Smith?

10 MR. SMITH:

11 Here.

12 MS. BARON:

13 Steve Olave?

14 MR. OLAVE:

15 (No response.)

16 MS. BARON:

17 Mr. Chairman, we have a quorum.

18 MR. POTEET:

19 Thank you. Anyone here today for
20 public comments?

21 MS. BARON:

22 No, sir.

23 MR. POTEET:

24 Okay. So, hopefully, everyone
25 has had a chance to read the minutes of the

1 last meeting and, if so, I'd like to
2 entertain a motion to approve.

3 MR. SMITH:

4 I make a motion to approve.

5 MR. POTEET:

6 Darty.

7 Second?

8 MR. CORMIER:

9 Second.

10 MR. POTEET:

11 Second from Tony.

12 All in favor, say, "Aye."

13 (All "Aye" responses.)

14 MR. POTEET:

15 Any opposed?

16 (No response.)

17 MR. POTEET:

18 All right. The motion carries.

19 Items for discussion, the first
20 thing we have is our financial report.

21 Mona.

22 MS. ANDERSON:

23 All right. If you will turn in
24 your binders to the financial statements for
25 the month ending March 31st. Cash in the

1 bank at the end of the month was \$1,787,792.
2 The hearings and fines accounts receivable
3 was \$515,200. At the bottom of the page,
4 the current liabilities were \$48,549, and
5 the primary increase in that was the escrow
6 fines, which will -- if they're approved
7 today will be moved to revenue next month.

8 On Page 2, the deferred inflows
9 were \$289,515. Those are the deferred 2016
10 fees. Turning on to Page 5 -- I'm sorry,
11 Page 3, the statement of revenues, expenses,
12 and change in net position -- so on the
13 statement of revenues, expenses, and changes
14 in net position, the year-to-date revenue
15 was \$1,440,648 compared to \$1,078,000 last
16 year. The salaries and related benefits
17 increased this month about \$4,800 from the
18 same month last year and the remainder of
19 the expenses decreased \$3,200 for the month
20 and increased \$18,900 for the year-to-date.

21 On Page 5, the vehicle
22 maintenance, we had an increase from that
23 mainly due to the age of our vehicles. We
24 have one vehicle that required major repairs
25 and another one that had to be towed and is

1 having to be replaced. The year-to-date net
2 position was \$665,839.

3 On Page 6, you can see the month
4 to month comparison of revenues and expenses
5 last year to this year. On Page 7 is a
6 graph of those amounts and -- between
7 February and March. We were pretty flat on
8 both revenue and expenses. Not much change
9 there. Page 8 shows a comparison of the
10 revenue year-to-date to last year. There
11 were increases in most areas, including the
12 salesmen -- salesperson licenses, auction
13 transaction fees, and hearing costs and
14 fines.

15 Page 9 is the certificate of
16 deposit summary. There were no changes this
17 month -- I'm sorry, last month. This month,
18 we will have -- the Landmark CDs are up for
19 maturity on -- and we'll mostly likely roll
20 those over.

21 On Page 10, the accounts
22 receivable hearings report, we had an
23 increase in fines of \$8,800 and payments of
24 \$26,250. That first page shows \$6,250 of
25 that and the second page shows \$20,000

1 collected on Lauco, the balance being
2 \$515,200.

3 So unless there are any
4 questions, that concludes my report.

5 MR. ROY:

6 Question. Mechanical issues with
7 our vehicles, they're outdated. They're
8 old. I mean, we have funds.

9 MS. ANDERSON:

10 Yes, sir. But they really
11 require that the vehicles be totally out
12 before we can surplus them and order a new
13 vehicle.

14 MR. ROY:

15 I did hear that. But these were
16 for the investigators?

17 MS. ANDERSON:

18 Yes, sir. And sometimes it's
19 costly for us to maintain those older
20 vehicles that are having problems. They're
21 far off. We have to, you know, tow them
22 back to the office to have them repaired and
23 -- when they're not functioning.

24 MR. ROY:

25 How many miles do these vehicles

1 have?

2 MS. ANDERSON:

3 It varies.

4 Derek, do you know off the top of
5 your head? I don't know off the top of my
6 head.

7 MR. PARNELL:

8 I think we only have maybe two of
9 them, one under 100,000 miles. This fiscal
10 year, we did budget to purchase two vehicles
11 and we have to submit approval for those two
12 vehicles and it's a little process. We have
13 to get approval and then after we get
14 approval for them to purchase it, we can
15 purchase them. So we budgeted one vehicle
16 for next fiscal year, which, of course, is
17 in July. I'm trying to get two for this
18 fiscal year.

19 MR. ROY:

20 Thanks. I'll move on that
21 report.

22 MR. POTEET:

23 Okay. We have a motion. I need
24 a second.

25 MR. SMITH:

1 I'll second.

2 MR. POTEET:

3 Second by Darty.

4 All in favor, say, "Aye."

5 (All "Aye" responses.)

6 MR. POTEET:

7 Any opposed?

8 (No response.)

9 MR. POTEET:

10 All right. Financial reports are
11 approved.

12 All right. The next thing, we
13 have a payment of invoice for Attorney Sheri
14 Morris. Derek.

15 MR. PARNELL:

16 Commissioners, you can find in
17 your packet Attorney Morris' bill for
18 services for March 2015. I've reviewed the
19 services performed and the accountant has
20 reviewed the calculations and that they are
21 correct. Attorney Morris' bill for services
22 for March 2015 is \$4,130. Commissioners, I
23 ask that you approve payment of Attorney
24 Morris' bill.

25 MR. CORMIER:

1 I make a motion.

2 MR. POTEET:

3 I have a motion from Tony.

4 I need a second.

5 MR. BREWER:

6 Second over here.

7 MR. POTEET:

8 All in favor, say, "Aye."

9 (All "Aye" responses.)

10 MR. POTEET:

11 Any opposed?

12 (No response.)

13 MR. POTEET:

14 All right. The next thing on our
15 agenda is a discussion of amended stipulated
16 order. Derek, help us out here, Select Car
17 Company.

18 MR. PARNELL:

19 Our discussion of the amended
20 stipulated agency order is for Select Car
21 Company located in Shreveport, Louisiana.
22 Commissioners, Select Car Company came
23 before you in an administrative hearing in
24 November of 2014. He then returned in
25 January of 2015 to ask for additional time

1 to clear up some of those issues that he was
2 having out there. You should have it in
3 your packet the amended order and the
4 findings during that hearing. And he was
5 given an additional 30 days to clean up some
6 things and make sure that he had everything
7 that he was working on with some of those
8 consumers to clear up some of those issues
9 and concerns that he had out there.

10 On February 26th, we did receive
11 from Mr. Anthony several documents, which
12 appear to be noted, and discussed what he
13 has done to alleviate some of those
14 concerns. Mr. Anthony is here today. He
15 wanted to go through and kind of let you all
16 know exactly what he has done, because as I
17 understand the way the stipulated agency
18 order is, is that if he hasn't complied
19 within the time frame that was prescribed
20 that he can get additional fines and his
21 license suspended.

22 MR. POTEET:

23 Do you -- at this point, do you
24 think that he has complied with everything?

25 MR. PARNELL:

1 Not everything. I brought Montie
2 in today. He's kind of more abreast of
3 exactly what's going on with him.

4 So Montie, can you.

5 MR. POTEET:

6 Montie, please get us updated on
7 that.

8 MR. WISENOR:

9 I've been communicating with Mr.
10 Anthony pretty much every week, just getting
11 updates on the -- at the time of the first
12 hearing, I think there were five consumers
13 that had not received their plates,
14 registration, and the lender had not had
15 their liens recorded. As of today, four of
16 those have been done. One of them is still
17 pending. Mr. Anthony stated that he's
18 having issues getting the title from another
19 dealer that he purchased a vehicle from.
20 And then, also, another customer's issue has
21 come forward since then, a customer by the
22 name Eddie Washington.

23 Mr. Anthony maybe can explain the
24 current situation on that, but I believe the
25 title was being held by MAFS on some titles

1 that they were holding against Select Car
2 Company. But as of now, those two are still
3 pending, as the others were, and we have
4 copies of the registration showing the
5 others were taken care of.

6 MR. POTEET:

7 I noticed -- I didn't remember
8 everything on this, but I noticed the last
9 thing on the findings of fact was that there
10 was -- you mentioned MAFS, which is now
11 Nextgear, I think, because they merged with
12 another company. Item #15, litigation
13 between respondent and Nextgear is still
14 pending in Indiana. Is that the one you're
15 talking about?

16 MR. WISENOR:

17 Yes, we can explain.

18 MR. POTEET:

19 Well, we'll get to that in a few
20 minutes. All right. I guess Mr. Anthony --
21 does he need to be sworn in? It's not a
22 hearing.

23 MR. HALLACK:

24 Yes, it's not a hearing.

25 MR. POTEET:

1 Okay. Mr. Anthony, do you want
2 to tell us what's going on?

3 MR. ANTHONY:

4 Well, we have all but one of the
5 titles that are registered and liens
6 recorded, but the one we have, we've not
7 been able to get it from ZBest Cars in
8 Lafayette. We are in the process of filing
9 suit for two titles and before we got our
10 dispute settled, they filed suit against us
11 back sometime ago, but before that, we were
12 trying to get these titles and after about
13 three or four months, we called and checked
14 on the titles and they said they had them.
15 We said, put them in a draft or send them to
16 our bank and we'll get them taken care of if
17 all the paperwork is in line. Well, they
18 don't know how to do that. You know, this
19 is a company that has been in business for
20 some time, but don't know how to handle a
21 title with a draft, which is done by --
22 very, very often, but they didn't know. So
23 they finally sent them and it was not what
24 it should be in there. And we've gone back
25 and we tried to -- there's only one of the

1 ones now that they still have that we needed
2 the title for and we offered them dollars to
3 get the title, but they came back and didn't
4 want to accept our offer. Of course, this
5 caused us problems with lenders, because it
6 was some four months after we had purchased
7 these cars before they had access to the
8 titles on these cars. And, of course, it
9 caused us problems with the lenders. It's
10 caused us problems with the customer and, of
11 course, with the Commission, you know, this
12 concern. But we have been trying to get
13 them to get that court date set, which they
14 have not done to this date and we just
15 basically are at a stand off with them right
16 now.

17 MR. POTEET:

18 Is that -- you said, ZBest. Is
19 that the same title as with Nextgear?

20 MR. ANTHONY:

21 No. That's a different one.

22 MR. POTEET:

23 Okay. So you're in a court
24 battle with ZBest to get those titles?

25 MR. ANTHONY:

1 Yes. But they want to get the
2 court date set, so we can go ahead and get
3 this thing completed and taken care of.

4 MS. MORRIS:

5 Do you have a copy of the suit or
6 the suit number?

7 MR. ANTHONY:

8 I'm sorry?

9 MS. MORRIS:

10 Do you have a copy of the suit or
11 the suit number?

12 MR. ANTHONY:

13 I don't have it with me, but I do
14 have copies of it.

15 MS. MORRIS:

16 Maybe you can send that.

17 MR. CORMIER:

18 Well, what exactly was the issue
19 with getting the title, is there an excuse
20 for it, what was their reasoning?

21 MR. ANTHONY:

22 Because we are asking for some
23 help on getting the liens recorded because
24 of the fact that it's going to cost us extra
25 dollars for penalties and fines and they're

1 not wanting to do anything to help us with
2 those things. And that's what we're asking
3 for, because they're the ones that helped
4 with the titles before, for about four or
5 five months before we ever had knowledge of
6 them being there.

7 MR. CORMIER:

8 Okay. I see. So it's not that
9 you didn't pay them in time?

10 MR. ANTHONY:

11 Right.

12 MR. CORMIER:

13 They just didn't have the titles
14 in.

15 MR. POTEET:

16 So is the title available right
17 now?

18 MR. ANTHONY:

19 Yes, it is available and we have
20 had made the efforts to get it and we made
21 an offer on what we paid for the car to get
22 it, but that's not what they want.

23 MR. POTEET:

24 They want more than you offered?

25 MR. ANTHONY:

1 More than what we agreed to.

2 MR. CORMIER:

3 Did you have some type of draft
4 or buyer's order?

5 MR. ANTHONY:

6 I'm sorry?

7 MR. CORMIER:

8 Did you have some type of draft
9 when you bought the car stating how much you
10 were going to pay for it?

11 MR. ANTHONY:

12 Yes. You know, a draft is almost
13 like a check. You just enclose paperwork in
14 there and it comes to your bank and
15 everything. We go down and if all the
16 paperwork is done correctly where we can get
17 it registered, we go ahead and pay it and
18 our bank sends the money back.

19 MR. CORMIER:

20 Right. I know how it works. My
21 question is, the amount y'all agreed on,
22 they want more than the amount y'all agreed
23 on?

24 MR. ANTHONY:

25 They want more than what we paid

1 them for the car.

2 MR. CORMIER:

3 And do y'all have anything in
4 writing like a draft bill of sale or
5 anything like that?

6 MR. ANTHONY:

7 We've agreed to bring them --
8 from Shreveport to Lafayette, we agreed to
9 bring them cash money to pick up the draft,
10 but we have not gotten them to agree to that
11 yet.

12 MR. CORMIER:

13 Okay.

14 MR. ANTHONY:

15 But they've changed attorneys on
16 us twice.

17 MR. POTEET:

18 I'm having a little trouble
19 understanding this. Okay. So how much did
20 you offer for the car?

21 MR. ANTHONY:

22 We paid them -- well, we first
23 offered them \$2,500 --

24 MR. POTEET:

25 Okay.

1 MR. ANTHONY:

2 -- and they wouldn't take it
3 because of the problems that we've been
4 through and we came back and offered them
5 the \$3,200. That's what we paid for it,
6 \$3,200.

7 MR. POTEET:

8 Okay. And you got this car and
9 you took it to your place and you sold it to
10 a retail customer?

11 MR. ANTHONY:

12 Right.

13 MR. POTEET:

14 So they gave you the car?

15 MR. ANTHONY:

16 Yes, we had the car.

17 MR. POTEET:

18 But you didn't have an agreed
19 upon price?

20 MR. ANTHONY:

21 Oh, yes, we give them a draft at
22 the time that we purchased the car.

23 MR. POTEET:

24 Well, why did they want more
25 money?

1 MR. ANTHONY:

2 For the time that we had this car
3 and -- some probably six months now.

4 MR. POTEET:

5 Well, I don't want to be hard
6 about this, but it seems to me like you need
7 to go ahead and pay for the car, and then
8 sue them for the title.

9 MR. ANTHONY:

10 That's what we're trying.

11 MR. POTEET:

12 Because we have a retail customer
13 that's hanging out and the only reason that
14 he or she doesn't have their title --
15 anybody here that's in the car business --
16 and correct me if I'm wrong on this -- but
17 I've got a customer that doesn't have the
18 title that they can't properly register the
19 car that they bought, because you and ZBest
20 are fighting over \$700. I don't think that
21 that's acceptable.

22 MR. ANTHONY:

23 We've offered to buy the car back
24 from the customer and he doesn't want to do
25 it yet. We've offered to put him in another

1 car. He wants to keep that one. We've made
2 those two offers to the customer.

3 MR. POTEET:

4 Well --

5 MR. DUPLESSIS:

6 So this is a \$700 difference
7 here; is that it? I mean, that's the whole
8 --

9 MR. ANTHONY:

10 We've offered him -- you know, we
11 were wanting more money for the problems
12 that we've had the extent that we've been
13 having, because they didn't furnish the
14 title in a timely manner. You know, it was
15 -- it was five or six months they had the --
16 we had the car, but they didn't have the
17 paperwork to us.

18 MR. DUPLESSIS:

19 Well, that's an issue. You can't
20 cash a draft without a title.

21 MR. ANTHONY:

22 Right.

23 MR. CORMIER:

24 Mr. Anthony, your attorneys' fees
25 are going to probably run you more than \$700

1 to fight this.

2 MR. ANTHONY:

3 I don't think he can beat us in
4 court.

5 MR. CORMIER:

6 But the problem is, the customer
7 is the one suffering here.

8 MR. ANTHONY:

9 Right. I agree.

10 MR. CORMIER:

11 You know, we try to --

12 MR. ANTHONY:

13 We've offered to do these two
14 things, either one, to buy it back or to put
15 him in another vehicle. At this point in
16 time, just as late as Friday, we made the
17 same offer to him, again.

18 MR. POTEET:

19 Well, we're dancing around that
20 issue just to begin with.

21 MR. TAYLOR:

22 All dealers probably in the state
23 do it, but at the end of the day, you can't
24 sell a car without a title. I mean --

25 MR. BREWER:

1 You're not supposed to.

2 MR. POTEET:

3 Obviously, it happens, because we
4 have non-delivery of title as our number one
5 issue; is that right?

6 MR. PARNELL:

7 Right.

8 MR. POTEET:

9 So, again, I'm not a car dealer.
10 I'm in the auction business. So I've got
11 car dealers around this table. Wouldn't it
12 make the most sense -- this is what I think.
13 Wouldn't it make the most sense that he pays
14 ZBest to get that title, close this deal out
15 with the customer, and then go back and
16 fight ZBest?

17 MR. CORMIER:

18 Yes.

19 MR. POTEET:

20 Is there anybody here that
21 disagrees with that?

22 MR. HALLACK:

23 And, legally, that's the best
24 thing to do, because if not --

25 MR. BREWER:

1 Actually, he's not supposed to
2 have the vehicle on his lot to sell until he
3 has the title in his possession and he has
4 21 days, I think it is, to produce the
5 title, but the State can actually go in and
6 issue another title to that consumer and
7 bypass all of y'all, and then don't care if
8 you get your money or not, but it's happened
9 before.

10 MR. WISENOR:

11 The customer would have to file a
12 claim against the dealer's bond and go
13 through that process.

14 MR. BREWER:

15 Right.

16 MR. POTEET:

17 That's not any more expedient --
18 I mean, that's -- you're right. That is a
19 remedy, but that's not any more expedient
20 than the other two things. I mean, if I'm
21 trying to get this consumer his title as
22 quickly as possible, the best thing would be
23 for you to pay ZBest and get the title.

24 MR. BREWER:

25 Right, get over with.

1 MS. BARON:

2 Will ZBest accept what you're
3 offering and give you the title?

4 MR. ANTHONY:

5 They won't accept what we paid
6 for it.

7 MS. BARON:

8 So they won't give you the title?

9 MR. POTEET:

10 They want \$3,200. They want more
11 money.

12 MR. TAYLOR:

13 One has nothing to do with the
14 other for what you sold for in the
15 beginning. Now, you have to pay them
16 whatever and, like I said, countersue for
17 the difference.

18 MR. POTEET:

19 Yes. I mean, here we've got what
20 our remedies are. You can do what Mr.
21 Brewer was telling you and you'll be
22 completely out, plus your bond will be filed
23 on and you'll probably no longer be able to
24 do business as a car dealer in our state.
25 In fact, I'm not going to say probably, you

1 won't. Once there has been a claim against
2 your bond, it doesn't get resolved very
3 well. Your other option is to keep dragging
4 this customer out while you and ZBest fight
5 over \$700. What I think makes the most
6 sense is to, as soon as possible, get ZBest
7 paid off. Then, get the consumer taken care
8 of. Then, go back and fight ZBest in court
9 or whatever it is you want to do.

10 Is there anybody here that
11 disagrees with that?

12 MR. HALLACK:

13 I would suggest that we have an
14 investigator contact whoever it is he's
15 dealing with at ZBest and try to work --
16 make sure the deal gets worked out.

17 MR. POTEET:

18 That will be good.

19 MR. DUPLESSIS:

20 At this point, ZBest is actually
21 withholding title and that is strictly
22 against the law for the consumer.

23 MR. HALLACK:

24 Unfortunately, they're not
25 licensed by us anymore.

1 MS. BARON:

2 No, they're not.

3 MR. WISENOR:

4 I believe that the majority of
5 the --

6 MS. BARON:

7 They're licensed through the
8 Louisiana Motor Vehicle Commission, not with
9 us.

10 MR. DUPLESSIS:

11 It doesn't matter. They sold a
12 used car and our commission has the right to
13 regulate the sale.

14 MR. HALLACK:

15 Only licensees.

16 MS. BARON:

17 Only our licensees.

18 MR. DUPLESSIS:

19 If they have a license, we have
20 the right to regulate them.

21 MR. GUILLORY:

22 Was it bought directly from ZBest
23 or was it bought through their auction?

24 MR. ANTHONY:

25 They used to have a business

1 probably a couple of miles from where we are
2 located and I bought the car from them
3 directly off the lot and since then, they
4 have closed.

5 MR. GUILLORY:

6 I'm just -- all I'm curious about
7 is if it was sold through an auction or you
8 just made an offer on the vehicle on their
9 lot.

10 MR. ANTHONY:

11 It was bought directly from them.

12 MR. POTEET:

13 I think that Mr. Hallack, our
14 attorney, has made the best suggestion,
15 which is for Montie to get in touch with
16 ZBest and see if we can't expedite this.
17 But no matter what, we need to get that
18 title.

19 Mr. ANTHONY:

20 And I agree with y'all.

21 MR. POTEET:

22 Okay.

23 MR. ANTHONY:

24 I want to get it done.

25 MR. POTEET:

1 All right. So let's move on to
2 the one that's the litigation with Nextgear.
3 I'm assuming that title is still out --

4 MR. WISENOR:

5 Yes.

6 MR. POTEET:

7 -- that you have a consumer with
8 a car with no title, because you can't get
9 it from Nextgear. Tell us a little bit
10 about that one.

11 MR. ANTHONY:

12 I traded the car, and then I sold
13 the car. He came in and he wanted to trade
14 it for this Chevrolet and we made a deal and
15 agreed and since then, we still have not
16 been able to get the title, because it's
17 tied up in litigation. We have contacted
18 him and I think the car has been sold from
19 the guy that bought it to someone else. I
20 tried to make contact with them on Friday
21 before I came here to find out what the deal
22 was on it. Then, all the phone numbers that
23 I had were no good anymore.

24 MR. POTEET:

25 Again, I have to walk through

1 this. I'm not as smart as some people, but
2 you -- it has been retailed at -- somewhere
3 has the car been retailed, did you retail
4 the car?

5 MR. ANTHONY:

6 I retailed it.

7 MR. POTEET:

8 And then the retail customer sold
9 it?

10 MR. ANTHONY:

11 That is what that customer says.

12 MR. WISENOR:

13 He traded it in.

14 MR. ANTHONY:

15 Traded it in.

16 MR. HALLACK:

17 To another dealer?

18 MR. WISENOR:

19 To another dealer in town and
20 he's been contacting me, wanting to try to
21 get -- and the majority of these issues that
22 Mr. Anthony is having were a dispute with
23 the -- either the floor planner or the --
24 and the lender on some -- most of these
25 situations.

1 MR. POTEET:

2 But what's the --

3 MS. BARON:

4 Have we tried to get the title
5 like we normally do?

6 MR. WISENOR:

7 I contacted their local rep and
8 he's supposed to be checking, because he
9 said that even though Nextgear and DSC and
10 MAFS combined, that Manheim is still
11 handling some of their older deals, because
12 all this I think took place during that
13 merge of the two companies. So I've got a
14 man checking on that right now.

15 MR. POTEET:

16 Okay.

17 MR. ANTHONY:

18 I did talk to some of Manheim's
19 people last week and they were unable to
20 find the title, but, you know, the Nextgear
21 rep is in the process of trying to get the
22 title from them. It was bought and sold
23 through Manheim and when they merged,
24 Nextgear is supposed to have the title, but
25 we have not found it.

1 MR. POTEET:

2 Why is there litigation between
3 you and Nextgear?

4 MR. ANTHONY:

5 Because of the floor plan
6 whenever we had those cars that were out and
7 hadn't been paid off at the time that they
8 made their audit.

9 MR. HALLACK:

10 And his defense was they still --
11 under the Manheim agreement, they still owed
12 him money --

13 MR. ANTHONY:

14 \$50,000.

15 MR. HALLACK:

16 -- that he could access, but
17 after the merger, they refused to allow him
18 access to those funds.

19 MR. CORMIER:

20 Because he was out of trust,
21 though, basically.

22 MR. POTEET:

23 Well, they didn't owe you money.
24 He meant that you didn't have a credit line
25 anymore.

1 MR. CORMIER:

2 They cut it off, because he was
3 out of trust.

4 MR. ANTHONY:

5 This is a reserve that I had
6 built up over time. I had a reserve, I
7 think \$100 every car that we bought and
8 floored through Manheim and I had built it
9 up to approximately \$50,000.

10 MR. POTEET:

11 Montie, let me ask a question.
12 Let's look at this in the most bare bones
13 way possible. If we paid -- if he paid
14 Nextgear, MAFS, whoever is handling this,
15 for that car, would he be able to get the
16 title?

17 MR. WISENOR:

18 If they can locate the title,
19 because --

20 MR. POTEET:

21 Did they lose the title?

22 MR. WISENOR:

23 Well, that's what I'm saying, I'm
24 checking into that myself.

25 MR. ANTHONY:

1 They misplace paperwork and
2 titles, you know.

3 MR. POTEET:

4 Yes. We do that, too, probably,
5 but usually you can get another title. I
6 mean, sometimes it's harder than at other
7 times, but some are easy, some are hard, but
8 they can be replaced. So I guess what I'm
9 saying is, how much do you owe Nextgear to
10 get this car?

11 MR. ANTHONY:

12 I think it's \$5,000, I believe,
13 off the top of my head.

14 MR. POTEET:

15 All right. Well, I would suggest
16 here, again, that -- to find the most
17 expedient matter and Montie will help you on
18 that.

19 MR. WISENOR:

20 Like I said, one of their reps is
21 going to get the information for me.

22 MR. POTEET:

23 Based on what I've heard so far,
24 I don't think we can -- I mean, help me out
25 here, guys. What do you think we should do?

1 MR. BREWER:

2 Well, you've been paid for both
3 vehicles they're talking about, right?

4 MR. ANTHONY:

5 I'm sorry?

6 MR. BREWER:

7 You've been paid your money for
8 the vehicles?

9 MR. ANTHONY:

10 Yes. It was a trade-in on one of
11 them.

12 MR. TAYLOR:

13 Is this your only problem,
14 Nextgear right now? Is this your last
15 problem -- is your total exposure with
16 Nextgear right now, this one?

17 MR. ANTHONY:

18 Maybe more than that, but it's
19 possible we could be -- come out on the plus
20 side. Our attorney tried to contact them.
21 He hasn't heard anything from them in two
22 months.

23 MR. TAYLOR:

24 Do you have a dollar amount of
25 exposure that you have with Nextgear right

1 now, not including the \$50,000, just how
2 much do you owe Nextgear right now, to get
3 square with Nextgear?

4 MR. ANTHONY:

5 Probably in the 30s.

6 MR. TAYLOR:

7 In the 30s. Okay. And I would
8 assume if you're in the 30s, there's a lot
9 more other cars out there with people riding
10 around with no -- they don't have titles to
11 their cars; is that correct?

12 MR. ANTHONY:

13 No.

14 MR. HALLACK:

15 These are the only two, right?

16 MR. ANTHONY:

17 Right.

18 MR. TAYLOR:

19 Then, why is the 30s, if -- Mr.
20 Hallack, can you help me?

21 MR. HALLACK:

22 It's been a long time since I've
23 read the lawsuit. So I'm not sure exactly
24 what all Nextgear is claiming that he owes
25 them for.

1 MR. WISENOR:

2 I don't know.

3 MR. BREWER:

4 You must still have the cars
5 then.

6 MR. HALLACK:

7 That's true. They picked up all
8 their cars.

9 MR. BREWER:

10 They picked the cars up, but you
11 still owe them \$30,000?

12 MR. ANTHONY:

13 Probably somewhere in the low
14 30s.

15 MR. TAYLOR:

16 Which means he probably could
17 have just paid for just those two to get
18 those titles. I mean, I'm sure they're not
19 going to release them.

20 MS. BARON:

21 That's what they's supposed to
22 do, but --

23 MR. POTEET:

24 Well, I mean, they could be
25 forced to release them. They could be

1 forced to if it goes that far to get it in
2 the hand of the consumer.

3 MR. GUILLORY:

4 Normally -- I've dealt with --
5 through them. Fees, penalties, interest, at
6 the end of the day, the dealer was able to
7 come up with the money to pay for what was
8 the original floor payment to the -- by the
9 state. They released the title, because
10 basically they told them, you don't want to
11 get caught, you are going down the road, you
12 can't recover from it. Your fees, penalties
13 and interest, you just go and do whatever
14 you want. That consumer will get that title
15 and you can either do it clean or you can do
16 it dirty, but one way or the other, he will
17 end up with the title, so the guy just
18 signed off and released it.

19 MR. WISENOR:

20 Nextgear already knows if they'll
21 have -- I mean, if we -- if the customer
22 files a claim then we'll go get the title,
23 but that's what Mr. Anthony was trying to
24 avoid by taking care of them before the
25 customers went to that step.

1 MR. TAYLOR:

2 So I guess the whole point I'm
3 getting at, do we have enough money today
4 right now to take care of the ZBest problem
5 and the Nextgear problem to get these
6 customers right in their cars?

7 MR. ANTHONY:

8 Yes.

9 MR. TAYLOR:

10 You do. Okay. How many months
11 are we into this 60 days? I think we gave
12 him 60 days to get everything together and
13 to go through tax time.

14 MR. POTEET:

15 Well, we -- the date that I
16 signed the order is January 30th.

17 MR. TAYLOR:

18 Didn't we give him a 30-day
19 extension and we are 30 days past the 30
20 days; is that correct?

21 MR. POTEET:

22 Well, 30 days from January 30th
23 would be March 30th, and now we're almost to
24 the 30-day extension.

25 MR. ANTHONY:

1 I thought we would have the ZBest
2 title, but they wouldn't release it.

3 MR. POTEET:

4 Right.

5 MR. BREWER:

6 Can I ask you, are you assigning
7 temp tags to these people to drive these
8 vehicles?

9 MR. ANTHONY:

10 We give them 7 -- 5 day tags
11 since the other one expired.

12 MR. POTEET:

13 You know you're not supposed to
14 do that, right?

15 MR. ANTHONY:

16 I'm sorry?

17 MR. POTEET:

18 I said you know you're not
19 supposed to do that?

20 MR. ANTHONY:

21 Okay.

22 MR. WISENOR:

23 I wasn't aware he was doing that.

24 MR. DUPLESSIS:

25 What's the alternative in a

1 dispute like that?

2 MR. POTEET:

3 Let me ask you another question.
4 Let's go back to the item with the dispute
5 with Mid-Atlantic involving the titles to
6 the vehicle. Those were -- that was a
7 consumer lender, Mid-Atlantic, correct?

8 MR. ANTHONY:

9 They floor plan.

10 MR. POTEET:

11 Oh, they were a floor planner for
12 you?

13 MR. ANTHONY:

14 Yes.

15 MR. POTEET:

16 Okay. I thought they were a
17 consumer lender.

18 MR. DUPLESSIS:

19 Now, you had two floor planners?

20 MR. ANTHONY:

21 I had two floor plans at the
22 time.

23 MR. WISENOR:

24 No, Mid-Atlantic was a consumer
25 lender.

1 MR. POTEET:

2 That's what I -- I thought
3 Mid-Atlantic was a consumer lender.

4 MR. ANTHONY:

5 Mid-Atlantic is a consumer.

6 MR. WISENOR:

7 I think he misheard you.

8 MR. POTEET:

9 So what's the story with those?

10 MR. WISENOR:

11 That's what these remaining ones
12 were through -- we had five pending. He
13 took care of four of them and one is -- the
14 one he's talking about, ZBest cars, that's
15 the remaining one.

16 MR. POTEET:

17 Okay. Those were the same thing,
18 really?

19 MR. WISENOR:

20 Correct.

21 MR. POTEET:

22 I mean, the same one that
23 Mid-Atlantic is looking for are tied up with
24 either ZBest or Nextgear?

25 MR. WISENOR:

1 Well, the last one with
2 Mid-Atlantic is the one held up at ZBest.

3 MR. POTEET:

4 Okay.

5 MR. WISENOR:

6 The individual, I think he paid
7 cash for -- Mr. Eddie Washington paid cash
8 for that one, basically.

9 MR. ANTHONY:

10 We made a swap.

11 MR. WISENOR:

12 The swap, I forgot the situation.
13 He did a trade in.

14 MR. CORMIER:

15 I have a question. Are any taxes
16 owed on the vehicle?

17 MR. ANTHONY:

18 Yes, yes.

19 MR. WISENOR:

20 On both.

21 MR. TAYLOR:

22 To simplify things, how many
23 customers are out in cars without titles
24 right now?

25 MR. ANTHONY:

1 Two.

2 MR. TAYLOR:

3 Two.

4 MR. POTEET:

5 The Nextgear car and the ZBest
6 car.

7 MR. HALLACK:

8 So he's complied with some of the
9 stuff, but not all the stuff.

10 MR. ANTHONY:

11 It took us forever to finally
12 make contact with someone at ZBest and -- if
13 you call them today, you may get -- you'll
14 get someone, but they won't call you back.

15 MR. DUPLESSIS:

16 Mr. Chairman, I would have to
17 confirm the situation at ZBest, not to
18 soften what is going on here, because it's a
19 difficult entity at times to do business
20 with. I agree. Everyone here would concur
21 with that aspect.

22 MR. CORMIER:

23 That's correct.

24 MR. TAYLOR:

25 I would think that they would

1 have get some extension to get these two
2 worked out.

3 MR. POTEET:

4 And here's what I'd like to see,
5 you guys hear what I have to say and see if
6 you agree with this or have another
7 alternative. I think we need to spend,
8 let's see, two weeks -- two weeks for Montie
9 to take control of this situation and get
10 back to us -- get back to Derek -- since we
11 won't meet again for two weeks, get back to
12 Derek and make a recommendation, here's
13 where we are, here's what I recommend. At
14 that point, Derek can then recommend at our
15 next meeting what we do next. Does that
16 make sense to everybody? That two weeks
17 should be more than enough time to resolve
18 these issues or get us to the point where we
19 can say, we're not going to get these issues
20 resolved. But I think Montie is the one
21 person in this room that can understand all
22 sides of this and pull it together.

23 Do you feel comfortable with
24 that, Montie?

25 MR. WISENOR:

1 Yes, sir. I can do that.

2 MR. POTEET:

3 Does anybody have any other
4 suggestions?

5 MR. DUPLESSIS:

6 I would add to that, Mr.
7 Chairman, that Mr. Parnell may need to get
8 involved when it comes to ZBest. The other
9 part I don't know about, but, you know, I've
10 found that if you have a -- if you're
11 willing to pay -- a lot of times you're not
12 able to pay ZBest, so.

13 MR. POTEET:

14 I understand what you're saying.

15 MR. ANTHONY:

16 They've got two locations, one in
17 Shreveport and one in Bossier, but both of
18 them have been closed down for several
19 months.

20 MR. HALLACK:

21 It's hard to make contact with
22 any of them.

23 MR. POTEET:

24 So you understand what we're
25 doing here?

1 MR. ANTHONY:

2 I understand.

3 MR. POTEET:

4 Okay. So we're going to extend
5 this another couple of weeks. Montie is
6 going to take control of the situation, give
7 us answer -- get an answer back to Derek.
8 Derek may have to go to the Louisiana Motor
9 Vehicle Commission and discuss their
10 licensee, ZBest, and what's going on. I
11 think two weeks is enough to get all of that
12 at least to the point where we can make a
13 decision. Right now, you haven't complied.
14 Technically, you haven't complied. So, you
15 know, the only decision we could make now is
16 to give you a little more time with our
17 control of the situation or just say, you're
18 finished. And I think we want to make sure
19 these consumers get taken care of.

20 MR. ANTHONY:

21 And we want to get them taken
22 care of.

23 MR. POTEET:

24 I believe you.

25 MR. ANTHONY:

1 I've been in business for 40
2 years -- more than 40 years.

3 MR. POTEET:

4 Okay. All right. That's all we
5 need you for right now. You're dismissed.

6 MR. ANTHONY:

7 Thank you.

8 MR. POTEET:

9 All right. The next thing on our
10 agenda is discussion of correspondence
11 received from the Attorney General's Office.

12 MR. PARNELL:

13 Commissioners, you have in your
14 packet the document from the Federal Trade
15 Commission Office. We received an e-mail
16 from Lisa Magna, who is the Assistant
17 Attorney General with the Department of
18 Justice. Her office was asked to join in a
19 common letter to the Federal Trade
20 Commission concerning the supplemental
21 notice of proposed rule making for the used
22 motor vehicle trade regulation and rules,
23 which is the used car buyer's guide. The
24 request is to know what the Used Motor
25 Vehicle Commission's position is on the

1 issue. The initial period for response has
2 passed, but the Attorney General's Office
3 still would like to know what the LUMVC's
4 position is regarding the matter. Once we
5 give our position, the AG's Office will
6 contact the Federal Trade Commission to give
7 that response. And if you would look, I
8 sent it out in an e-mail to you all a little
9 bit before Ms. Baron sent it out to you as a
10 packet and just kind of wanted to know our
11 position on it.

12 MR. HALLACK:

13 I prepared a little outline.

14 Okay. Well, basically, what it
15 is, is that the FTC is recommending some
16 proposed changes to the federal regulations
17 that deal with what they call the used car
18 rule. And, basically, it's a bunch of
19 changes to the buyer's guide disclosure.
20 First of all, the most important thing to
21 them is that they want to make some
22 disclosures with regard to vehicle history.
23 There's a concern that dealers do not
24 disclose certain issues, specifically a
25 branded title. So they want to put a place

1 on the buyer's guide that's posted on the
2 car, whether or not that -- the vehicle has
3 any branded title. So that's an additional
4 thing they want to make. They also want to
5 require dealers to obtain an NMVTIS report.
6 I'm not exactly sure what that is. I know
7 it's a vehicle history report. Maybe
8 somebody can enlighten us on the NMVTIS.

9 MR. DUPLESSIS:

10 The national motor vehicle
11 transportation identification system.

12 MR. HALLACK:

13 Okay.

14 MR. DUPLESSIS:

15 That's where you check your
16 recalls, but I don't know if it is serial
17 number driven specifically. I know it has
18 list of the recalls, which really doesn't
19 extend to the deal.

20 MR. POTEET:

21 I think that this report -- this
22 is just -- we deal with it a little bit in
23 the auction industry. I think that this
24 report is -- like Ron said, it's a legal
25 type of thing as opposed to, say, a CarFax

1 and an AutoCheck. This is something if the
2 car has been stolen, if the VIN has been
3 stolen or if it's been recalled.

4 MR. SMITH:

5 Or salvaged --

6 MR. POTEET:

7 Or it's been salvaged --

8 MR. SMITH:

9 -- we have to report it.

10 MR. POTEET:

11 You guys -- so that kind of stuff
12 where somebody has reported to a
13 governmental agency, the state or federal,
14 something about the vehicle as opposed to
15 CarFax where, you know, there's a lot of
16 things on CarFax that really wouldn't --

17 MR. HALLACK:

18 So it wouldn't include repairs?

19 MR. POTEET:

20 No.

21 MR. HALLACK:

22 What about flood damage?

23 MR. DUPLESSIS:

24 Yes.

25 MR. SMITH:

1 If it has been reported, that's
2 the thing. We're supposed to report that,
3 if it's been salvaged.

4 MR. POTEET:

5 Right. I mean, it's -- so it's a
6 -- you know, I guess there's a fine line
7 here between a CarFax report and NMVTIS
8 report, I've heard it is kind of messed up
9 that way. But it is more of a governmental
10 reporting.

11 MR. GUILLORY:

12 It is a repository for the state.
13 Each State agency that deals with auto hulk
14 for flood -- like major flood issues, flood
15 reports through NICB, they will upload one
16 portal of it and it uploads everything that
17 has to deal with flood damage for any amount
18 of claims by VIN number to that deal. Also,
19 as far as the State of Louisiana, I know how
20 that works, because I've seen it. When you
21 -- every month, when auto hulk, they upload
22 to that -- it's a federal -- federal
23 database that uploads to it. So what's
24 pushing this specific deal are clean
25 Mississippi titles that you run them in

1 Louisiana and they come back auto hulk.

2 MR. POTEET:

3 Well, I know that one issue with
4 this specific report is that not every state
5 complies in the same way. I don't want to
6 say it's completely voluntary, but it's --
7 the information is not being backed up by
8 the federal government. It's being accepted
9 by the federal government. So some states
10 are more into it. And the idea obviously is
11 that if you have one repository at the
12 federal level, then if somebody in
13 California can find out something about a
14 vehicle from Virginia, and all of the
15 different combinations that you can think
16 of. So, you know, when I'm looking at
17 something like this, I say that's kind of a
18 nice thing, but at this point, until
19 everybody complies with it in the same
20 manner, you're going to get more information
21 from some states than others.

22 MR. HALLACK:

23 Well, according to the proposed
24 changes, the dealer -- the buyer's guide is
25 supposed to advise the customer that the

1 dealer has this report and must disclose it.

2 MR. POTEET:

3 Well, I mean, he can have the
4 report, but I'm just saying -- I'm giving a
5 little background about what I know about
6 it, is that it's not complete.

7 MR. HALLACK:

8 And also they're requiring by
9 this proposed amendment that the buyers's
10 guide say that if the dealer has in his
11 possession a vehicle history report --

12 MR. POTEET:

13 Like a CarFax?

14 MR. HALLACK:

15 -- he must disclose it. But the
16 question is, if he's got it in his
17 possession, he's got to provide it. Also,
18 too, the last thing on there is the buyers's
19 guide tells the customer that the dealer
20 must disclose all recalls on the vehicle,
21 which would be on that report anyway, so.

22 MR. BREWER:

23 I have a question.

24 MR. HALLACK:

25 Yes.

1 MR. BREWER:

2 Go back to D, the customer
3 insists on a CarFax, the dealer has to pay
4 for that CarFax?

5 MR. HALLACK:

6 At no charge to the customer,
7 that's correct, only if you have it. In
8 other words, you have to have it in your
9 possession. If you don't have in your
10 possession and the customer comes to you and
11 asks for it, you can charge him for it if
12 you don't have it. But if you have it, you
13 have to give it to him. So, I mean, that's
14 kind of crazy. That would tell a dealer,
15 you know, don't keep CarFax at your
16 dealership.

17 MR. DUPLESSIS:

18 No, you've got to. That's how
19 you buy cars.

20 MR. POTEET:

21 But I think if you -- if, you
22 know, you think of it in a realistic
23 setting, okay, if you have the vehicle
24 history report in your possession, I don't
25 know why couldn't you give it to them. And

1 then if you get it and didn't disclose it,
2 CarFax could easily and, you know, I don't
3 know if somebody would sue somebody over
4 that for a \$35 report or a \$50 report, I
5 don't know what they charge nowadays, but
6 you can just say, well, I bought the car on
7 May 1st and on April 20th, he had run a
8 CarFax and wouldn't show it to me. I mean,
9 those records are available.

10 MR. HALLACK:

11 Well, you've got to remember,
12 this law is only proposing changes to the
13 buyer's guide. It's not saying this is a
14 violation.

15 MR. POTEET:

16 I'm just talking about the
17 possibilities. I'm back to Ron's point. If
18 you have the CarFax report or the AutoCheck
19 report on any vehicle, why wouldn't you? I
20 can't explain why somebody would try to hide
21 that from the buyer. I mean, if they were,
22 there's probably other things they're doing,
23 too.

24 MR. CORMIER:

25 It's probably a bad CarFax.

1 MR. HALLACK:

2 That's -- for them, that's the
3 most important part and the changes they're
4 willing to make on the buyer's guide, is to
5 make sure that the vehicle history is
6 provided. The next thing is as is. They
7 want to do a clarification on as is on the
8 warranty of the buyer's guide. And they
9 want to make sure the customer understands
10 the meaning and significance of a vehicle
11 sold without a warranty and that they --
12 they also want to maintain the dealer's
13 liability for concealing material facts or
14 misrepresenting material facts about the
15 vehicle. So they want to make sure that
16 there's clarification on as is. So they
17 want -- they're suggesting a statement on
18 the buyer's guide to the effect that as is,
19 no warranty means the dealer will not pay
20 for any repairs. But the recommended
21 statement or as is does not cover a dealer
22 for concealed problems, dealer
23 misrepresentations, or dealer misconduct.
24 So everybody has an understanding of that?
25 The as is, no warranty, they want to change

1 the disclosure on the buyer's guide to say
2 that the as is, no warranty does not cover a
3 dealer for concealed problems, dealer
4 misrepresentations, or dealer misconduct.

5 MS. MORRIS:

6 This is what the law says.

7 MR. DUPLESSIS:

8 Well, the question is, what is
9 concealed defect? If you have a switch that
10 doesn't work or you have a minor light that
11 doesn't work that costs you a whole bunch of
12 money, if you have to start working all
13 these things out, his business is going to
14 become usually contentious for cars he
15 bought and sold I think this is going to
16 open it up without clear definitions. This
17 is going to open it up -- it's going to open
18 up a can of worms that, you know, some poor
19 dealers are trying to get an innocuous light
20 to come on and it costs a ton of money and
21 that devalues the vehicle to where it's not
22 serviceable. I don't think I would be in
23 favor of that portion unless it was better
24 defined.

25 MR. HALLACK:

1 Well, that's what they're trying
2 to do. They're trying to make
3 clarifications as to what as is, no warranty
4 means, you know, and if -- they want to make
5 sure that the customer sees on the buyer's
6 guide that this does not mean that the
7 dealer is not responsible for something that
8 he does fraudulently or conceals or
9 misrepresents.

10 MR. DUPLESSIS:

11 You know, I think it's simple. I
12 mean, how many cars do you go through, you
13 know, in a week or a month and yourself,
14 Eric, and some of the other dealers. I
15 think it's going to become a contentious
16 issue over minors problems. But what this
17 simply doing it is an implied warranty when
18 the dealer has clearly stated there is no
19 warranty on that car, especially as is, no
20 warranty, older cars, you can't inspect them
21 enough to find out all the defects.

22 MR. POTEET:

23 Well, I would expect for this --
24 I agree with you, Ron. I think it's very
25 vague and, you know, things become --

1 MR. DUPLESSIS:

2 Worse.

3 MR. POTEET:

4 -- they become vague.

5 MR. HALLACK:

6 It's probably vague now.

7 MR. POTEET:

8 Yes. No, I agree with that. I
9 agree with that. But I think that, you
10 know, if they are looking for our input, I
11 would say that one of the things we would
12 want to be behind is something that kind of
13 defines what that means by concealed or --

14 MR. DUPLESSIS:

15 A better definition.

16 MR. POTEET:

17 A better definition there. I
18 don't have any problems with it in a
19 conceptual sense, but when you get down to
20 reality, it does become difficult, like, you
21 know, you have some switch that -- some
22 light that, you know, keeps coming on and
23 off and you can't figure out exactly why.
24 Is that, you know, did you conceal that or
25 maybe you didn't know it and what's the

1 difference between concealing and not
2 knowing and, you know, when somebody -- when
3 a consumer comes back to you -- again, you
4 guys in the car business, sometimes some
5 people are reasonable and some people are
6 unreasonable. Some people say, look, this
7 59 cent item is a reason for me to bring
8 this car back. And other people say, oh,
9 look, I got this \$800 problem, can you help
10 me out with it, can you fix it, you know,
11 we're dealing with people and some are
12 reasonable and some are not, but when you
13 put a vague statement like that, it opens it
14 up to -- kind of a can of worms and I think
15 that's where we're going here maybe.

16 Dino, what do you think?

17 MR. TAYLOR:

18 I'm thinking we're going to have,
19 you know, a bona fide certification program,
20 as is cars.

21 MR. DUPLESSIS:

22 When I read this and I've read
23 all 13 painful long laborious pages of that
24 work and I've got to tell you, I walked away
25 thinking if we don't problems now, we are

1 fixing to have a whole pile of problems and
2 it is going to go to certification and
3 disclosure, and then it's just going to
4 create -- you know, it's going to create
5 adversarial everything amongst --
6 especially, the low end buyer who is forced
7 to buy some cars to get transportation and
8 that it's going to become contentious.

9 MR. TAYLOR:

10 There's nothing about the changes
11 that I had a lot of problem with, except
12 that right there. All of this other stuff,
13 I mean, I already make every customer that
14 buys car from me sing a CarFax, whether it's
15 good or bad or ugly. I don't care. It's
16 fine. They're not angry if it had a little
17 paint work on it when they buy it or
18 whatever, if they know about it up front and
19 they're angry, but it is three weeks later
20 and they're embarrassed.

21 MR. DUPLESSIS:

22 They're pissed.

23 MR. TAYLOR:

24 So I didn't see a whole lot. I
25 was actually kind of -- I like some of this

1 stuff except for that one portion.

2 MR. HALLACK:

3 I think --

4 MR. BREWER:

5 The consumer is not paying any
6 attention to that as is anyway. If
7 something goes wrong with the car that you
8 sold them, they're going to come back to you
9 and once you start working on that car, then
10 as is kind of falls by the wayside. So it
11 depends on the dealer taking care of their
12 customer more than anything.

13 MR. HALLACK:

14 Well, we changed our law and I
15 wanted to put that in there, that we changed
16 783(F)(3) and basically it says that if you
17 put that disclaimer on the vehicle, you kind
18 of waive your right to sue that dealer. And
19 the provision in our law that's in there --
20 when I was talking to Derek and Kim about
21 these proposals to the FTC rules, Derek's
22 and Kim's first response was, well,
23 783(F)(3) repeals all the redhibition laws
24 and I said, no, it's not, the redhibition
25 law is still there, but if you look at

1 783(F) (3), you would tend to believe that
2 redhibition is really not there anymore if
3 the buyer puts the as is, no warranty on the
4 car.

5 MR. DUPLESSIS:

6 You just don't get redhibition
7 cases on used cars like you once did. But
8 then again, a lot of quality of the American
9 manufacturers has come up substantially.

10 MR. HALLACK:

11 So what I'm saying is, we have a
12 provision in our law that doesn't take into
13 consideration misrepresentation,
14 concealment, or fraud. So if you read this
15 law straight out, if the dealer has a
16 customer sign an as is, no warranty on the
17 car, then the dealer is not liable for it
18 even if the dealer misrepresented the car.

19 MR. BREWER:

20 Well, when you turn -- when you
21 go to an auction and turn the red light on,
22 that means as is, what you see is what you
23 get. The expression is, if it breaks in two
24 pieces, you own two pieces.

25 MR. WISENOR:

1 The burden of proof would be on
2 the purchaser to determine at what point was
3 the misrepresentation, was it concealed by
4 the dealer or was it done before it entered
5 the dealer's possession, but it's civil,
6 correct?

7 MR. POTEET:

8 Well, I think that's what we're
9 -- you know, we're all saying, that we need
10 to have some more definition of that before
11 we want to jump in and say, hey, this is a
12 great idea. I mean, it's -- again, it's
13 like Dino said, it all sounds pretty good
14 when you think of it, but then when you
15 start thinking about the actual process of
16 going through one of these things, well, now
17 it gets little bit hairier. You know, at
18 the auction, the difference is, we're not
19 selling to consumers. So, you know, that --
20 the idea there is we do as much as we can to
21 make sure the sellers announce things
22 properly. But, you know, we don't have the
23 same -- same rules. I mean, it's a
24 different thing. Those are professional
25 buyers and you're supposed to be

1 professional buyers.

2 MR. TAYLOR:

3 And you don't have salesmen at
4 your auctions massaging a customer as is,
5 it's going to be okay either.

6 MR. POTEET:

7 Occasionally, we have a seller
8 that says that, though.

9 MR. HALLACK:

10 Well, there's a recent -- really
11 recent case out there and I just changed my
12 legal research tool to a different thing and
13 I could not print the case, but the case
14 actually discusses the redhibition law and
15 it discusses 783(F)(3) and it's a case
16 involving Ramsey Auto Sales out of Monroe.
17 And what the customer said, and the court
18 bought it, was the customer drove the car
19 off the lot and basically the salesperson
20 said, everything is good, everything is fine
21 with the car. The court accepted that and
22 accepted that as a misrepresentation,
23 because as the customer drives the car off
24 the lot, something goes wrong with it. But
25 Ramsey filed based on this law saying, well,

1 he signed the as is, no warranty, I'm not
2 liable for anything including my own
3 concealment of the defects the car has, and
4 the Court came back and said, no,
5 redhibition still exists, you are still
6 liable for your own concealment and your own
7 misrepresentation of the car. So the
8 scenario, just like you said, that if you
9 sit there and have them sign the as is, no
10 warranty, and you telling them it is a great
11 car.

12 MR. POTEET:

13 I mean, I can't argue with that.
14 I think that's the way any of us would feel.

15 MR. HALLACK:

16 Well, Ramsey Auto Sales didn't
17 agree. They filed based on our law that
18 says if you sign it, you waive it.

19 MR. DUPLESSIS:

20 And I think Ramsey did the wrong
21 thing in this case, if the case is cited
22 correctly as what you're saying, I doubt
23 that it is.

24 MR. HALLACK:

25 I wish I could print it, because

1 it was a very interesting case, a lot more
2 details and facts.

3 MR. TAYLOR:

4 When you figure it out, can you
5 send it to me.

6 MR. POTEET:

7 Well, at the auction, if
8 something like that happens -- when
9 something like that happens at the auction,
10 I ask the fellow, why did you put the red
11 light on, and then tell the guy there's
12 really nothing wrong with the car, and then
13 I want to ask the buyer, why would you buy a
14 red light car and think there was nothing
15 wrong with the car, because the seller told
16 me there was nothing wrong with the car.
17 Well, what do you want me to do as an
18 auction? You know, we've got the red light
19 on. You two guys have decided to do -- to
20 each make an irrational decision. So fight
21 it out amongst yourselves. That's why we
22 have rules. And I think the same things
23 goes here. You can carry that same thought
24 process through. If I have an as is, no
25 warranty, the last thing I should do is say,

1 the car is great, everything is fine.
2 Somewhere along the line, you've got to say,
3 well, why did you have them sign that? I
4 would agree with the Court on that. They
5 shouldn't have said a word afterward. And I
6 agree with what Ron says, you can't hide
7 behind the law. I don't think that's right.

8 MR. HALLACK:

9 So we should -- what would you
10 recommend for us to -- would you recommend
11 us making any suggestions back to the
12 Attorney General's Office to say, we would
13 -- we have some concerns about the language,
14 the vagueness?

15 MR. POTEET:

16 I think everybody agrees that
17 there's some vagueness there on that.
18 That's going to cause more problems than
19 it's going to help.

20 MR. DUPLESSIS:

21 Yes, and I think the other
22 question is -- I'm not sure about the
23 recalls. How do we find recalls on a car if
24 they're not listed for a car. You know,
25 every car that comes in, if I've got to call

1 the dealer and give him the VIN number and
2 rely upon the person on the other end of the
3 phone, that's an enormous issue.

4 MR. POTEET:

5 I think that's a good question,
6 too. I thought -- Nestor, you mentioned
7 that the NMVTIS has a lot of information,
8 but I was under the assumption that NHTSA
9 kept that information, but the point would
10 be, no matter who does it, there should be
11 some sort of a -- and I'm assuming it's the
12 federal repository where somebody punches in
13 the numbers and, boom, the recalls pop up.

14 MR. CORMIER:

15 CarFax has some recalls on there,
16 but --

17 MR. DUPLESSIS:

18 But not all.

19 MR. CORMIER:

20 -- but --

21 MR. POTEET:

22 But that's not what's being
23 requires. The requirement is the NMVTIS --

24 MR. CORMIER:

25 Right.

1 MR. POTEET:

2 -- not that you have a CarFax.

3 So I would say that our suggestion would be
4 back to the Attorney General, where would --
5 where would this repository be and how would
6 I get my hands on it, so I can look at that
7 kind of thing. And we're having some of the
8 same issue in the auction industry, you
9 know, what is the responsibility of the
10 auction with a recalled vehicle, you know.
11 So we're still -- we're still looking for
12 that, because -- well, I can tell you the
13 legal answer, but not right now. I'll talk
14 to you later. But the point is, there
15 should be some place that car dealers and
16 auctions can go and punch in the VIN number
17 and, boom, this is the answer.

18 MR. WISENOR:

19 This report is actually listing,
20 along with NHTSA and NMVTIS, the vehicle
21 recall list site at www.safecar.gov. I
22 don't know what -- I never went to that
23 site. This actually -- on this -- Page 2 of
24 this report.

25 MR. DUPLESSIS:

1 But it's going to have to be
2 vehicle specific.

3 MR. WISENOR:

4 Go figure it out.

5 MR. DUPLESSIS:

6 If it's not vehicle specific,
7 then we have accomplished nothing.

8 MR. WISENOR:

9 It just addresses vehicle recall.

10 MR. HALLACK:

11 So what you're saying is, there
12 may be overall recalls that a dealer may not
13 be aware of that may not be in the NMVTIS
14 report.

15 MR. POTEET:

16 Well, there are thousands of
17 recalls, literally.

18 MR. DUPLESSIS:

19 It gives a threshold and we go to
20 that threshold and we accomplish what that
21 report says that we're doing and we're still
22 in violation, that's a pretty crappy scheme
23 of law to put on everybody, especially not
24 being the dealer. You ask us on a GMC, I
25 can tell you. But for me to go find out

1 what's on a Nissan that's on a used car lot,
2 that's a whole different threshold, because
3 we don't have that list. We don't have that
4 corporate information the way a Nissan
5 dealer would.

6 MR. HALLACK:

7 So you would be opposed to
8 providing recall history?

9 MR. BREWER:

10 Well, you're setting yourself up
11 for quite a lawsuit. Let's say that you
12 checked the Honda store and Honda has a
13 recall for an air bag, but maybe you didn't
14 know it and you sold the vehicle and
15 something happens to the people, who is
16 responsible, because I didn't tell him it
17 was a recall? I didn't know.

18 MR. DUPLESSIS:

19 Or we were informed of the
20 recalls as dealers, that's the issue.

21 MR. POTEET:

22 But I think what you're saying is
23 that one step is, are you responsible for
24 every manufacturer's cars.

25 MR. DUPLESSIS:

1 That's correct.

2 MR. POTEET:

3 And then for the used car dealer,
4 then he's going to be responsible.

5 MR. TAYLOR:

6 He's going to say, hey, listen
7 up, can you check this recall for me?

8 MR. DUPLESSIS:

9 Exactly.

10 MR. TAYLOR:

11 You know that five minutes ago
12 when you said that we've got to have the
13 proper channel to be able to get that
14 information. If you had that information, I
15 mean, if you had that channel to tell the
16 customer --

17 MR. POTEET:

18 I think it's okay, but I think it
19 needs to be just like that. When you punch
20 in the VIN number into some national
21 database and it pops out. If it doesn't
22 come up on that, then you're okay, and then
23 if there's some issue that comes up later,
24 you should be able to go back and say, the
25 national database, whatever the national

1 database is that we're all supposed to be
2 using, it wasn't on it. I can't be held
3 responsible.

4 MR. CORMIER:

5 Whenever you go to the
6 vehiclehistory.gov website, it will take you
7 straight to CarFax.

8 MR. POTEET:

9 Vehiclehistory.gov. What about
10 the safeguard aspect. Well, again, you
11 know, if the FTC is going to mandate this
12 stuff, they need to have a place that you
13 go.

14 MR. CORMIER:

15 So you can check every deal.

16 MR. DUPLESSIS:

17 If they can't accomplish it, how
18 can we accomplish it, because calling every
19 dealer is time consuming.

20 MR. POTEET:

21 It's impossible. It's not really
22 time consuming. It's impossible. How are
23 you going to call everybody?

24 MR. HALLACK:

25 Well, one, we should tell them

1 that we're concerned about providing the
2 recall history, because there's no reliable
3 repository for that information.

4 MR. POTEET:

5 Yes, or there needs to be one.

6 MR. HALLACK:

7 And then we're also concerned
8 about the as is, no warranty language that
9 you want everybody to consider, because it's
10 vague and it may lead to considerable
11 litigation.

12 MR. POTEET:

13 You're an attorney, what do you
14 think?

15 MR. BREWER:

16 The auction -- if you have a
17 lemon return, is your title stamped lemon
18 return?

19 MR. DUPLESSIS:

20 It's stamped buy back.

21 MR. BREWER:

22 It's stamped buy back?

23 MR. POTEET:

24 It doesn't say lemon, it says buy
25 back.

1 MR. WISENOR:

2 It is branded non-conformity
3 title. That's the way Motor Vehicles
4 describes that or defines that.

5 MR. HALLACK:

6 Well, I didn't know there was
7 such a title. There's a title change when a
8 dealer buys back a car?

9 MR. POTEET:

10 If it's bought back for a lemon
11 law.

12 MR. DUPLESSIS:

13 It's a notation on the title.

14 MR. HALLACK:

15 Well, see, that's the last thing
16 I want to put on here is that the Commission
17 would encourage that it be more uniform.

18 MS. BARON:

19 There's your lawsuit.

20 MR. POTEET:

21 Is there any other -- those are
22 the big -- I think those would be the big
23 comments from us.

24 Does anybody else have anything?

25 MR. HALLACK:

1 Well, the other thing I was going
2 to say was that requiring a dealer to
3 provide the car history, if he has it, might
4 encourage some dealers not to get it.

5 MR. POTEET:

6 You guys are car dealers. I
7 wouldn't think so, because you want that
8 information.

9 MR. CORMIER:

10 That's very common now to ask for
11 so you to provide it. We provide it on
12 every vehicle. It's a monthly fee, like \$9
13 a month.

14 MR. DUPLESSIS:

15 It's expensive.

16 MR. POTEET:

17 It depends on what you want.

18 MR. TAYLOR:

19 But for the car dealer, though,
20 if you're selling 20 cars a month, how many
21 -- I mean, you know --

22 MR. DUPLESSIS:

23 It's not intrusive or
24 unattainable to have CarFax. We have
25 AutoCheck. We buy by AutoCheck and we sell

1 by CarFax. So we actually pull two on every
2 vehicle.

3 MR. HALLACK:

4 Why not just CarFax?

5 MR. DUPLESSIS:

6 Well, AutoCheck is not an entity
7 that is known to consumer if they want
8 CarFax.

9 MR. POTEET:

10 AutoCheck is much more reliable.
11 That is what we use at the auction.

12 MR. TAYLOR:

13 What I'm saying is you can't hide
14 behind one. What it says, if you have two,
15 you have to provide two.

16 MR. HALLACK:

17 I don't think it says that.

18 MR. DUPLESSIS:

19 Yes, it does.

20 MR. TAYLOR:

21 It says --

22 MR. HALLACK:

23 So if you have three, you would
24 have to provide --

25 MR. WISENOR:

1 I had a case where AutoCheck and
2 CarFax had totally different reports.
3 AutoCheck didn't get the discrepancy and it
4 has worked everywhere.

5 MR. POTEET:

6 Every vehicle that comes to the
7 auction gets run through AutoCheck before it
8 goes onto the block at our auction.

9 MR. WISENOR:

10 AutoCheck or CarFax?

11 MR. POTEET:

12 AutoCheck. And I'm pretty safe
13 in saying that any national auto auction
14 association, any auction around here deal
15 are with AAA, that they all put every car
16 through AutoCheck. It's an industry
17 standard.

18 MR. DUPLESSIS:

19 Well, the difference is CarFax
20 picks up all information. AutoCheck drills
21 down into the dealer's database at night a
22 thing called poling. So they actually go
23 down and pull our repair orders out of our
24 dealership and we've had problems with them,
25 like, reporting replacement of a mirror.

1 They report that as body damage. That's an
2 issue. If you have a mechanical error,
3 right. And they ruled that as body damage.
4 So they also report mechanical and they
5 report recalls and recall repairs and the
6 satisfaction of those recalls. So it's two
7 totally different entities.

8 MR. WISENOR:

9 CarFax listed every service that
10 that car had, because it was taken back to
11 the dealer for every bit of service it had
12 done and the odometer had to be changed at a
13 certain time. So AutoCheck, for some
14 reason, didn't catch that.

15 MR. POTEET:

16 One of the common problems with
17 CarFax that we see is that they're going for
18 an inspection and the odometer is recorded
19 wrong and it pops up and it says roll back.

20 MR. TAYLOR:

21 They had made a CarFax dealer
22 like myself, they made it a pretty easy
23 process. So, I mean, it isn't obvious.
24 It's pretty easy now. It wasn't a couple
25 years ago, I mean, you know --

1 MR. POTEET:

2 We -- and, again, most auctions
3 use AutoCheck and most auctions are
4 subscribers to CarFax, because we get so
5 many requests for it and we'll go ahead and,
6 you know, try to compare the two if we have
7 to.

8 MR. CORMIER:

9 It says here that NMVTIS is the
10 vehicle history report is intended to only
11 provide data on five key indicators
12 associated with prevention, auto fraud and
13 theft, which was one current state of title
14 and last title date; two, brand history;
15 three, odometer readings; four, total loss
16 history; and, five, salvage history.

17 MR. POTEET:

18 Well, that's pretty inclusive. I
19 mean, that's a lot.

20 MR. DUPLESSIS:

21 They just need to appeal to the
22 wrong stuff.

23 MR. POTEET:

24 I think the dealers and the
25 industry would be -- we have some dealers

1 back there, do you guys agree. I mean, you
2 don't really care if you have to run a VIN
3 number through something, it's just what is
4 it, where do I find it, how do I make sure.

5 MR. STROBERT:

6 Yes. I think -- I concur with
7 both of the guys from the standpoint that
8 most larger dealerships automatically give
9 the report to the consumer. But I also
10 agree with you guys that we're dealing with
11 two vehicles on a fence line for over 15
12 days. I disagree with Mr. Dino from the
13 standpoint, we did everything that we can.
14 The CarFax reads they got it cleared up and
15 AutoCheck reads that it hasn't been cleared
16 up. So we make the vehicle sit on the fence
17 until it's been cleared up, so we need to go
18 and do something with the vehicle, and we
19 have two of them waiting right there. So to
20 be able to depend on any of these
21 third-party providers if it's not national
22 and it is not consistent and it's not the
23 same every single time, it just turns into a
24 mess all the way across the board.

25 MR. POTEET:

1 Well, I think that is what makes
2 the most sense, in my opinion, is that there
3 should be a national database and it should
4 be run by the government. I mean, it should
5 be something that's not a third-party
6 provider, because it's a different thing and
7 it needs to be something that's pretty
8 basic, so you can put it through. For
9 recalls, I don't understand why that would
10 be so difficult, because most recalls are
11 required by the government. I think most
12 are required by the government and the
13 difference -- Ron and I were talking about
14 this earlier, if the difference between a
15 recall and a campaign is a recall is
16 something that could be safety related. Am
17 I right?

18 MR. DUPLESSIS:

19 It's the investigation of prior
20 to the actual recall.

21 MR. POTEET:

22 Yes.

23 MR. DUPLESSIS:

24 So they put on a campaign, and
25 then they certify it through the Department

1 of Transportation, and then it becomes a
2 campaign.

3 MR. POTEET:

4 So that kind of stuff should be
5 in some kind of -- one national database and
6 I think everybody agrees that's that what we
7 need, rather than depending on two
8 independent third-parties that have --

9 MR. STROBERT:

10 Well, keep this in mind, too,
11 that you guys are in business with each
12 other. So the reason why AutoCheck has been
13 so successful is because CarFax has said,
14 hey, if you're going to pay a premium price
15 based on the fact that the consumer is so
16 aware of the CarFax brand, so the AutoCheck
17 product is much lower cost to this and
18 that's the reason why there's two of them
19 now. And at the same time, there's also
20 ways on the back end portal of both of those
21 third-party vendors that you can actually
22 control what is shown in a report. I don't
23 know if it's the consumer or what you set up
24 the guidelines for, but there are things on
25 the backend that says, do you want to print

1 off all of the things that this report is
2 showing. So there's a -- you're putting
3 yourself and you're putting the dealers in a
4 very weird situation and it just seems like
5 you're going to have more problems going on
6 with this and you're going to have some
7 more.

8 MR. BREWER:

9 Especially on the recalls -- I
10 mean, the call backs, that's where your
11 problems are going to be.

12 MR. POTEET:

13 Well, that's what we're saying.
14 I think, you know, the two different types
15 of things you're looking at is the
16 government report, which would be recalls
17 and title histories or things like that,
18 whereas, the CarFax and the AutoCheck is
19 going to be more of some of the other stuff
20 that gets onto these reports. I guess the
21 more we talk about it, the more I think -- I
22 don't know why you would need -- I mean, I
23 don't understand. I don't sell cars for a
24 living. So I don't --

25 MR. HALLACK:

1 It is very important for
2 discussion, because you have to remember,
3 the feedback that they're getting it from is
4 largely from the Attorney General's Office
5 from every state. They're not really seeing
6 this from a dealer's perspective. So, I
7 mean, that would be a good reason for us to
8 make a comment.

9 MR. DUPLESSIS:

10 Yes. I think we've made the
11 comments and I think you get the gist of it.
12 I also think the new car dealers need to
13 have input, too, especially -- I would send
14 it forward to their commission with our
15 comments to make them aware.

16 MS. MORRIS:

17 When we received this, I did have
18 a conversation with the Assistant Attorney
19 General handling it and I advised her that
20 we only regulate some of the sellers of used
21 cars, that new car dealers with used car
22 lots are not under the regulation of this
23 Commission, so this Commission couldn't
24 really speak as to those dealers, which
25 might have different comments. So they were

1 going to also forward it to the New Car
2 Commission.

3 MR. POTEET:

4 All right. Do we need any more
5 conversation on that issue? It seems like
6 we've got mostly a consensus in this room
7 what needs to be done. You're going to have
8 50 Attorneys Generals?

9 MR. HALLACK:

10 Well, I don't think all 50.

11 MS. MORRIS:

12 I think that in your material was
13 a letter that one of them wrote and I think
14 about --

15 MR. HALLACK:

16 Oregon Attorney General's Office.

17 MR. POTEET:

18 -- and I think about half a dozen
19 signed off on there. So they're trying to
20 get a consensus, too, before they answer to
21 the FTC, maybe five letters instead of 50.

22 MS. MORRIS:

23 But none of the letters -- when I
24 went to the FTC website, those letters were
25 not posted yet. So they hadn't made it

1 through. There were some other comments
2 posted. One of them was from a dealer, but
3 it really was kind of nonsensical, but it
4 wasn't really -- -- but you can pull it up
5 and see all the comments that are there. I
6 haven't -- I pulled it up, but it will show
7 you on the website all the comments that
8 have been submitted so far.

9 MR. POTEET:

10 Well, I'll give the FTC credit.
11 At least they're trying to reach out and get
12 some input on it.

13 Okay. Next on our agenda is
14 ratification of proposed penalties. Derek.

15 MR. PARNELL:

16 You'll find in your packet the
17 stipulated agency orders and proof of
18 payments made for the imposed civil
19 penalties. As always, I determined that the
20 public interest can be served without
21 further administrative proceedings. I'll go
22 through all of them.

23 MR. POTEET:

24 Do we need to go through all of
25 them?

1 MR. HALLACK:

2 You need to announce them in case
3 somebody is here.

4 MR. POTEET:

5 All right. Let's do that. Let's
6 announce them, but let's not go through each
7 one. Announce them and see if there's --

8 MR. HALLACK:

9 By dealer name only?

10 MR. POTEET:

11 Yes, by dealer name only.

12 MR. PARNELL:

13 We have Moore Motors, White's
14 Auto Sales.

15 MR. POTEET:

16 If there's anyone here that hears
17 their company name or company they want to
18 represent, please let us know. If anybody
19 is here.

20 MR. PARNELL:

21 R&R Wholesale, Central Auto
22 Sales, Incorporated of Baton Rouge,
23 Certified Motors, LLC, Wholesale of Baton
24 Rouge, LLC, Unique Autos, LLC, Xpress Rent
25 to Own, Tint City Auto, Ms. Gator's Auto

1 Sales, Auto Plaza of Moss Bluff, LLC,
2 Acadian Used Cars, INC, Just Like That Auto
3 Sales, Fares Motor Company, EZ Rider of
4 Baton Rouge Rent to Own, LLC, D&N
5 Enterprise, LLC, and B&B Taxes and Auto
6 Sales. The total amount for the fines that
7 were imposed is \$21,050. Commissioners, I
8 ask that you ratify the fine amount and
9 accept the penalties and stipulated agency
10 order.

11 MR. TAYLOR:

12 I make a motion.

13 MR. POTEET:

14 A motion from Dino.

15 Second?

16 MR. SMITH:

17 I'll second.

18 MR. POTEET:

19 Second from Darty.

20 All in favor, say, "Aye."

21 (All "Aye" responses.)

22 MR. POTEET:

23 Any opposed?

24 (No response.)

25 MR. POTEET:

1 Thank you.

2 MR. HALLACK:

3 And I think we still need to
4 include them in the packet --

5 MR. POTEET:

6 Yes.

7 MR. HALLACK:

8 -- because if anybody -- any
9 Commissioner has a question about why did
10 Ms. Gator's -- you know, what happened
11 there.

12 MS. MORRIS:

13 One of the two commissions that I
14 work with, they just put a summary, just one
15 sentence, rather than put the whole consent
16 order. They just put the name and the type
17 of violation and the fine.

18 MR. PARNELL:

19 Okay.

20 MR. POTEET:

21 All right. Next item is the
22 Executive Director's report.

23 MR. PARNELL:

24 All right. If you will turn in
25 your packets, you will find enforcement

1 documents. The first one that you'll see is
2 alleged issue counts. There were 86 alleged
3 issues for the month of March 2015. The
4 second document is the case report, which
5 illustrates there were 60 cases that were
6 assigned to investigators in the month of
7 March; 7 cases were closed; 52 of them still
8 remain open.

9 The last document is the
10 department summary report, which illustrates
11 that there were a total of 30 cases that
12 were closed in the month of March. I do not
13 have any general information moving forward,
14 but if there are any comments or questions,
15 please --

16 MR. POTEET:

17 I wanted to ask a question back
18 to what Kirby brought up earlier about the
19 car situation -- our vehicle situation. So
20 did we -- do we have -- do all the
21 investigators have a vehicle?

22 MR. PARNELL:

23 Yes.

24 MR. POTEET:

25 And are they all running? Montie

1 is looking at me.

2 Are you okay, Montie?

3 MR. WISENOR:

4 I don't.

5 MR. POTEET:

6 Ronnie doesn't.

7 MR. PARNELL:

8 He doesn't have a vehicle,
9 because he's working part-time --

10 MR. POTEET:

11 Okay.

12 MR. PARNELL:

13 -- and so he turned his vehicle
14 in, but everybody else does have a vehicle.

15 MR. POTEET:

16 And all of our investigators have
17 safe vehicles?

18 MR. PARNELL:

19 Yes.

20 MR. POTEET:

21 Is there anything we can do --

22 MR. PARNELL:

23 To the vehicles themselves or --

24 MR. POTEET:

25 I'm just thinking, you know, with

1 the State, we kind of brought up the point
2 that we don't have a money problem.

3 MR. PARNELL:

4 No, no.

5 MR. POTEET:

6 We can buy vehicles. We can get
7 vehicles fixed, but is there something that
8 we report to the State or the agency, you
9 know, that tells us to pull the trigger to
10 do something?

11 MR. PARNELL:

12 No.

13 MS. ANDERSON:

14 They do fill out vehicle logs for
15 the month and on the back of the vehicle
16 log, there's a safety checklist and they're
17 all required to have regular oil changes and
18 have their maintenance done.

19 MR. POTEET:

20 Maintenance record.

21 MS. ANDERSON:

22 And so in that aspect, if there
23 was something that was really ongoing wrong,
24 then it would show up at that point, but we
25 have had instances -- Derek, what was wrong

1 with Angela's car, was that a converter?

2 MR. PARNELL:

3 Yes.

4 MS. ANDERSON:

5 And it's due to age of the car
6 and there's no way to predict that that's
7 going to go out. So are they safe? As far
8 as we can tell. They're having regular
9 maintenance, but whether or not, you know,
10 some parts are going to go out due to the
11 age of the car --

12 MR. POTEET:

13 I'm just saying, I don't want to
14 be held hostage to bureaucratic things when
15 we have money to make sure that we have safe
16 running vehicles.

17 MR. CORMIER:

18 I thought we were self-generated.

19 MR. POTEET:

20 Yes. I don't get that.

21 MR. CORMIER:

22 I have a question. Is there a
23 certain percentage, you know, that you can
24 -- you know, we should have to spend on a
25 car? I mean, we might have a \$10,000 car

1 and we're pending five grand on it. Do you
2 know if it goes over that amount?

3 MR. PARNELL:

4 No, to get rid of the car, not
5 necessarily a percentage in that regard.
6 There's the Division of Administration we
7 have to go through in order to get -- they
8 have to bid out for these vehicles and we
9 have to use one of the vehicles that's on --
10 that they bid out for. So we really can't
11 buy beyond what they have on the documents.
12 So -- but we're going to get -- I'm going to
13 start the process this week of trying to get
14 two vehicles, which means I have to turn it
15 in. It just depends.

16 MR. TAYLOR:

17 I think there are several of us
18 here, if you can give us a real short --
19 real short, because I know we are busy. I
20 think we heard the field investigators, and
21 we can hear from the people here. Give us a
22 short rundown of the process to get a car
23 bought.

24 MR. PARNELL:

25 What has to happen is, of course,

1 we have to budget for the car. And I have
2 to go out on the website and figure out
3 which vehicles we want to use. Sometimes,
4 they dictate that you have to have fuel flex
5 vehicles. They say you have to have one per
6 agency, but I've been buying them without
7 that and it kind of saved me a little bit of
8 money in regards to that. We're actually
9 just going to go out -- I submit a letter
10 that -- a letter of intent that I want to
11 purchase a vehicle and I have to explain to
12 them exactly what vehicles I want to trade
13 in to surplus.

14 MR. TAYLOR:

15 Or add a field investigator?

16 MR. PARNELL:

17 Or add a field investigator,
18 correct. Once I do that, submit the letter
19 of recommendation, we have to supply a check
20 for the amount of the vehicle that we want
21 to spend. We submit that to them for their
22 approval. In the past -- I don't know if
23 this is going to be the case this year, but
24 in the past, they've said that if the
25 vehicle is not having a lot of issues and it

1 just has high mileage, that's not something
2 that they wanted to approve.

3 MR. TAYLOR:

4 So they object?

5 MR. PARNELL:

6 Yes. But I -- then I'll go back
7 and meet with them again and send another
8 letter out to them and sometimes they will
9 approve it. In the past, they -- initially,
10 they rejected the first one that I
11 submitted, and then I sent another letter
12 out to them and they went ahead and approved
13 it. So that's how we got the last car two
14 years ago.

15 MR. ROY:

16 Who is they and them?

17 MS. MORRIS:

18 Fleet Management.

19 MR. PARNELL:

20 Fleet Management. This is all
21 under the --

22 MR. ROY:

23 What Management?

24 MR. PARNELL:

25 Fleet Management.

1 MS. MORRIS:

2 It's under the Division of
3 Administration. And this particular
4 administration is not in favor of agencies
5 owning vehicles, because I guess of
6 insurance and other things and the fact that
7 a lot of agencies no longer have vehicles or
8 the State has a contract with Enterprise.
9 And one of those agencies that I work with,
10 their investigators have to go pick up a car
11 at Enterprise on Monday, do their -- if
12 they're traveling out of town, so many miles
13 from their residence, they have -- so they
14 have to do their inspections near the
15 residence on a certain day, their paperwork
16 on a certain day. And then they'll go pick
17 up a vehicle on Wednesday and return it on
18 Friday, and so a lot of agencies were forced
19 to do that. This one was not. And some are
20 self-generated, too. So y'all are kind of
21 lucky to have cars. I don't know if that
22 will change with the change of the
23 administration, but they have really reduced
24 the number of State owned vehicles during
25 this administration. So there's a lot of,

1 you know, paperwork that you have to go
2 through. It's not as easy to replace a
3 vehicle.

4 MR. POTEET:

5 So they want you to jump through
6 hoops is what you're saying.

7 MR. TAYLOR:

8 And the reason why I wanted him
9 to explain that, when I first got here, my
10 first question was, you know -- and Kirby
11 was, well, we have the money, why don't we
12 have them. And then, of course, I found out
13 that it was this horrible cumbersome process
14 and I went through this with Derek when I
15 first got here, we've got the money, let's
16 buy a car. That's what I do.

17 MR. POTEET:

18 I'm sorry I brought that up.

19 The next thing on the agenda are
20 the committee reports. Legislative session.

21 MR. DUPLESSIS:

22 Our only bill this year is House
23 533. It's being represented by
24 Representative Price and it's going to be
25 heard tomorrow, I believe, at 10 o'clock in

1 the Commerce Committee in the House session
2 of the Capitol.

3 Sheri, do you want to give us a
4 little more update on that one? It seems to
5 be pretty innocuous.

6 MS. MORRIS:

7 These are basically the clean up
8 measures that Mr. Hallack had drafted that
9 have been reviewed at the committee meeting.
10 I was asked by the drafters -- on Page 2 of
11 4, it says you can't use certified,
12 certification, or other similar terms
13 without having a bona fide certification
14 process. They believed that a bona fide
15 certification process should have some
16 definition or clarification as to what the
17 minimal requirements for a certification
18 process were. I asked them to submit the
19 bill. That is a Class 3 bill. So it had to
20 be pre-filed. We were working up against
21 deadlines. So I said we will send it in and
22 at the next Commission meeting, we'll get
23 some direction as to that, but they felt
24 like that was not defined enough for this
25 statute and might lead to some disagreements

1 between consumers and dealers as to what was
2 bone fide.

3 MR. DUPLESSIS:

4 And I would agree and we have
5 time to do that, I believe.

6 MS. MORRIS:

7 Well, we have a committee hearing
8 tomorrow. So I don't know if that will come
9 up tomorrow in the comments.

10 MR. DUPLESSIS:

11 Are we prepared at the table to
12 address that, to offer an amendment right on
13 the spot.

14 MS. MORRIS:

15 If we have some language that we
16 think would qualify, the minimum standard
17 for certification.

18 MR. DUPLESSIS:

19 Gentleman, thoughts?

20 MR. STROBERT:

21 I mean, basically from what I'm
22 understanding is, is that bona fide is just
23 not legitimate enough to have the bill
24 passed, correct?

25 MS. MORRIS:

1 It's not specific enough.

2 MR. DUPLESSIS:

3 They want to rely on something.

4 MR. POTEET:

5 They want to say like the XYZ
6 certification program, here are the
7 guidelines.

8 MR. DUPLESSIS:

9 NIADA, KBB, it's a certified set
10 of guidelines at least I would say a 25, 27
11 point check something.

12 MR. POTEET:

13 Something that everybody can read
14 and say, this is the program that we follow.
15 That is what they are looking for instead of
16 just staying certified, obviously, if I
17 followed you into a room and said, write a
18 paragraph defining certified, we're going to
19 come up with 30 or 40 different answers.

20 MR. HALLACK:

21 Is there a uniform certification
22 process?

23 MR. DUPLESSIS:

24 No.

25 MS. MORRIS:

1 It is documented in writing that
2 is available to the consumer.

3 MR. POTEET:

4 Right. But you designate one,
5 you could designate one. You have the law
6 is written -- I don't know if I am wrong
7 with this, but if you designate it saying
8 that you can choose one of these three
9 certification programs, this is how it
10 works, you know, something like that, I
11 think that's kind of what they're looking
12 for, right?

13 MR. STRODERT:

14 Yes.

15 MR. DUPLESSIS:

16 Right, and I think it would be
17 KBB, NIADA, or NADA are the ones that are
18 immediately coming to my mind.

19 Eric, you know. Help me out.

20 MR. STRODERT:

21 Is there a possibility that we
22 can have the State, like LIADA, which is an
23 association and the NIADA create a
24 certification program.

25 MR. TAMBLING:

1 There's actually a certification
2 program that that came in effect, CPO from
3 national --

4 MR. POTEET:

5 NIADA.

6 MR. TAMBLING:

7 Through NIADA, I can get some
8 information on that.

9 So while we're on the subject, I
10 had -- one of our associate members had
11 contacted me Friday in reference to the rent
12 to own on this --

13 MR. DUPLESSIS:

14 Hold on. We'll get to that in a
15 second. We're prepared to address that.
16 Let's finish, so we can get to the table
17 tomorrow. We'll re-address that in one
18 second.

19 MR. HALLACK:

20 Just say a commission approved
21 certification process. And then we have --
22 we do a rule and reg and say what it is,
23 NADA does one or what he's talking about.

24 MR. STROBERT:

25 We'll be more than happy to

1 present multiple options and have the
2 Commission approve a certification program
3 that would be able to, perhaps, run it
4 through LIADA in a partnership with NIADA.

5 MR. DUPLESSIS:

6 We're good with that. Why don't
7 we soften the amendment. That would be in
8 conjunction with the qualities of NIADA,
9 Kelley Blue Book, NADA. That would be
10 enough. That would give us easier the
11 sellability at the table and to bring it
12 back into the Commission and get it done.

13 MR. HALLACK:

14 That's kind of different wording.
15 I would say Commission approved
16 certification process.

17 MR. DUPLESSIS:

18 They like associations like
19 NIADA.

20 MR. POTEET:

21 Well, why don't we say this, why
22 don't we say -- compromise her, Commission
23 approved such as NIADA?

24 MR. DUPLESSIS:

25 That would probably work.

1 What do you think, Sheri?

2 MR. POTEET:

3 That gives us options, so when
4 somebody says, what are you talking about
5 here, well.

6 MS. MORRIS:

7 You can say NIADA, Kelley Blue
8 Book or approved by the Commission.

9 MR. POTEET:

10 And I agree with Robert. If we
11 say Commission approved, that kind of gives
12 it some, you know, stamp of approval from a
13 State agency, but it's going to be something
14 that's easily obtained by dealers and easily
15 obtained by consumers, too.

16 MR. DUPLESSIS:

17 Right.

18 MR. POTEET:

19 Not some secretive thing.

20 MR. DUPLESSIS:

21 When you sit at the table and
22 offer those things up, the first thing that,
23 you know, one of the representatives is
24 going say, Ms. Morris, Mr. Poteet, Derek, is
25 this like KBB or is it like Kelley Blue Book

1 or NADA. I think a lot of times if you make
2 that preemptive strike, then you just settle
3 right into that consumer -- that consumer
4 posts and they see on the windows. But I'm
5 going to leave that up to you.

6 MR. STRODERT:

7 I'd like to say, I think leaving
8 out third-party businesses that are for
9 profit companies should be left out. The
10 KBB's of the world, the Edmunds of the
11 world, the CarFaxes of the world, the
12 AutoChecks of world, these are for profit
13 companies. So I think that rolling a
14 certification program that would be approved
15 by a State run association needs to be
16 separate of a third-party vendor, but it
17 needs to be on a commission approved basis
18 and not a third-part. I like the such as
19 NIADA, but is commission approved. So it
20 could be brought in front of the Commission
21 and you guys can approve the certification
22 process and the dealer can implement it, but
23 it has to have --

24 MR. DUPLESSIS:

25 Okay. I can go with that.

1 What's going to take place at the table is
2 going to have to take place at the table.

3 MS. MORRIS:

4 We would substitute commission
5 approved certification process or bona fide.

6 MR. HALLACK:

7 Or certification process approved
8 by the Commission in accordance with rules
9 and regs.

10 MR. DUPLESSIS:

11 Well, it might have to be a
12 little more meatier than that. It might
13 have to include inspection ready.

14 MR. HALLACK:

15 If you make it meatier, then
16 you're going to handcuff yourself.

17 MR. DUPLESSIS:

18 Well, okay.

19 MR. STRODERT:

20 You're going to what?

21 MR. HALLACK:

22 If you make it meaty and put a
23 lot of detail in it, you're going to
24 handcuff yourself.

25 MR. STRODERT:

1 Such as Commission approved?

2 MR. HALLACK:

3 Well, if you try to define what
4 Commission approval would be --

5 MR. POTEET:

6 That means the ten of us vote on
7 it, right? Commission approved is anything
8 that the 10 of us vote on.

9 MR. HALLACK:

10 Well, the Director will approve
11 it.

12 MR. DUPLESSIS:

13 Well, you'll propose it for
14 approval.

15 MR. POTEET:

16 We know what Commission approved
17 means. I mean, I don't think that's any --
18 I don't think that's a lot of language.

19 MR. HALLACK:

20 No, but I think you'll have to
21 adopt some rules and regs to say what needs
22 the Commission's approval.

23 MR. POTEET:

24 Okay. Well --

25 MR. CORMIER:

1 Let them tell us.

2 MR. POTEET:

3 -- I think that they can handle
4 it that point.

5 MR. DUPLESSIS:

6 Get to that point and --

7 MR. STRODERT:

8 The rules and regulation for the
9 Commission would be in order to get the
10 approval, to get approved by the Commission.

11 MS. MORRIS:

12 We can put approved by the
13 Commission, we can just agree to work with
14 NIADA before it gets to the floor, just to
15 get out of committee.

16 MR. DUPLESSIS:

17 Yes. I think you're going to
18 have to decide what gets it out of
19 committee. That's the whole thing, what you
20 present to the committee, if you give them
21 facts that they understand. Well, these
22 guys are from all different aspects. A lot
23 of times, they don't get what you're trying
24 to do. So then they start -- that's when
25 you get bad attachments. It then becomes --

1 it's bad, period.

2 MS. MORRIS:

3 I think just to take out the word
4 bona fide, because the staff had trouble
5 with it. So I think that's communication
6 that the committee will need.

7 MR. POTEET:

8 Bona fide is like the other terms
9 in the other ones, you know, bona fide to me
10 may not be bona fide to you.

11 MS. MORRIS:

12 I think we can remove that and
13 put commission approved. We can see what
14 questions they may have about that and we
15 can address that either through the national
16 certification or through rules.

17 MR. DUPLESSIS:

18 Dwayne, you had something on the
19 rent to own?

20 MR. TAMBLING:

21 Yes. I had a dealer contact the
22 association Friday in reference to rent to
23 own portion of that 533 bill and they were
24 concerned with the 30 percent cap on the
25 security deposit. Now, I'm not a rent to

1 own dealer, but I did a little checking up
2 on this and, of course, I called Keith
3 Kiraly, because he is a rent to own dealer
4 and he had some input, I think, on that
5 procedure.

6 MR. KIRALY:

7 Basically, I still buy cars. I
8 have five dealerships that I buy cars from
9 and, Ron, I am sure you can attest to it. I
10 go in and I bid on a package of cars. What
11 I put into cars and what the dealer bills to
12 me is completely different. He will bill me
13 cars for \$100 that he stole on a trade.
14 He'll bill me something that's junk and
15 might put \$3,000 or \$4,000 in it. When I
16 get back to my lot, I break them out
17 accordingly, but the paperwork and it might
18 not say that. It might say that the car is
19 \$100. When I book it into my lot, I might
20 book in for \$3,000, because it's just how I
21 move the numbers. Of course, my hands are
22 tied. I can only charge what each of the
23 dealership bills to me. That's ludicrous.
24 I mean --

25 MR. POTEET:

1 So let me ask you a question. So
2 it's not the 30 percent you're concerned
3 about. The phrase is the documented cost
4 that you're concerned about?

5 MR. KIRALY:

6 Yes. I mean, how do you
7 document, do you take my word on it? I
8 mean, again, I'm buying a package deal and
9 sometimes I have to step up on a package
10 knowing that he's going to make it up to me
11 on the next package, because I'm helping
12 that dealer out.

13 MR. POTEET:

14 Okay. Well, here's how I would
15 look at that from documented cost. The
16 logical standpoint for me would be, you know
17 how much you have in a car. If I ask you,
18 this vehicle on this lot, can you tell me
19 what your cost is on that car, you would
20 have some list that would say, I bought it
21 for \$100, I put a transmission in it, I
22 repainted it, I put new tires on it. So,
23 now, the cost of that car to me is \$3,500.
24 Why can't we define cost that way, that your
25 document says, documented cost? I wouldn't

1 even think that that would be what you paid
2 for it. I would think that that's your end
3 cost before you decide to retail it.

4 MR. KIRALY:

5 I mean, we'll get the list from
6 the dealer and we sit down and we move the
7 numbers to where they're supposed to be.

8 MR. POTEET:

9 I'm not concerned with that. I
10 mean, you're right. I understand you buy a
11 package of cars, you buy 10 cars for
12 \$10,000. That doesn't mean they're all
13 \$1,000 apiece.

14 MR. KIRALY:

15 Absolutely.

16 MR. HALLACK:

17 Well, there's a lot of confusion
18 on this issue. Derek and I spoke to Mr.
19 Kiraly a couple of weeks ago about this.
20 Security deposit does not mean down payment
21 and it says what a security deposit is. You
22 can take whatever down payment you want to
23 get. If it's an \$11,000 car and you get a
24 \$10,000 down payment, that's great. We're
25 not trying to regulate what a dealer gets in

1 a down payment. All we're trying to
2 regulate is if a dealer takes a security
3 deposit and the sole purpose of the security
4 deposit is to protect the dealer from
5 extraordinary wear and tear, some damage,
6 something beyond normal use, that's all a
7 security deposit is. We had this issue come
8 up in a case that Mr. Wisenor was -- Ronnie
9 Wisenor was working where the customer was
10 -- he was confused as to what -- the
11 difference between a security deposit and a
12 down payment, because it says something
13 about it being non-refundable and we decided
14 we needed to clarify what a security deposit
15 is, and then tell the dealer that if you're
16 going to take a security deposit, which is
17 only for damage or repairs beyond normal
18 use. So he could use it for that, but he
19 can't use it for a down payment. You can
20 take whatever down payment you want. The
21 down payment would be something that would
22 go toward the purchase price of the car. A
23 security deposit has absolutely nothing to
24 do with the purchase price of the car. A
25 security deposit is only to protect the

1 dealer for damage done to that vehicle.

2 MR. POTEET:

3 When I look -- okay. When I look
4 at this sentence, I don't have any problems
5 with any -- understanding any of this except
6 the word documented costs. I mean, a 30
7 percent -- 20 percent, it could be 80
8 percent, it could be 10 percent. The
9 documented cost is the key phrase.

10 MR. TAYLOR:

11 Why don't we work off the top
12 line selling price?

13 MR. DUPLESSIS:

14 Why aren't we working off of
15 monthly payments?

16 MR. POTEET:

17 Well, why would it be documented
18 costs, because now it's back to Dino's
19 point, why isn't it the price of the car,
20 because the price of the car to the consumer
21 because the documented cost means that at
22 some point -- when do you reveal that? When
23 are businesses required to reveal their cost
24 in something by law?

25 MR. HALLACK:

1 I don't think it's something a
2 lot of dealers do. I don't think a lot of
3 dealers take a security deposit. It's only
4 for extraordinary damage.

5 MR. POTEET:

6 Well, why can't --

7 MR. DUPLESSIS:

8 I would probably have to
9 disagree. Mr. Kiraly, what is your opinion
10 on that?

11 MR. KIRALY:

12 Well, here's the problem, okay,
13 again, I've been a rent to own dealer from
14 -- since its conception, 1998. I got the
15 first license in '98 when we went to court
16 and '99 we got the license. There's no
17 uniformity in a contract. And I brought one
18 -- I brought my contract, okay, and I have
19 amended it along the way. Dealers normally
20 take a UCC1 form that you get through a
21 bank, mortgage company, and so forth. We
22 have no uniformity. So I have seen
23 contracts of other dealers and I'm appalled.
24 I've seen them in vehicles. I've had
25 consumers bring them to me. Okay. I don't

1 agree with a lot of things in their
2 contract. My contract says in big bold
3 print, non-refundable security deposit. It
4 does. But then further on in the contract,
5 it tells them how that is refunded to them
6 once this contract is completed. Okay.
7 But, again, I don't know what the other
8 dealers are doing. I know their contracts
9 -- we have no uniformity. So, again, we're
10 going to have to look and see something on
11 that verbiage or something. We have certain
12 rules, but a lot of these dealers are really
13 going extreme on these rules. I mean,
14 they're going overboard. I don't know what
15 this specific dealer did to warrant this
16 even coming up, but we need to come up with
17 some type of a contract or some type of a --
18 with a set of rules, what can be in these
19 contracts.

20 MR. HALLACK:

21 Well, that's what 793 does. 793
22 outlines what you can put in a rent to own
23 contract. And what we had was a situation
24 where a customer was confused, because he
25 was seeing the word deposit that he thought

1 he would get it back, but it was clear in
2 the funding of the vehicle that it was a
3 down payment, that it went toward the
4 purchase price of the vehicle and what I
5 told you on the phone is, if you use the
6 word security deposit and it's actually a
7 down payment, you need to change the word to
8 down payment, because to a customer, they
9 may look at that and say, well, it was a
10 deposit, it wasn't a down payment if you're
11 using the word security deposit. And so he
12 had the whole contract laid out and he said,
13 see, there's where I put a security deposit
14 on the car, I want my security deposit back.
15 Now, it did say non-refundable -- or, no, it
16 didn't say non-refundable, I don't think it
17 said anything. But, anyway, so what we came
18 to realize is, that's really a down payment,
19 because it was in the payment part of the
20 contract. It was shown as a down payment.
21 The dealer called it a security deposit.
22 Again, a security deposit is only supposed
23 to be -- and it's defined here what it is,
24 that it's only beyond normal wear and tear.
25 A lot of dealers don't have comp and

1 collision on their policies on that vehicle.
2 I know you do, but some other dealers that
3 do rent to own, they may not have comp and
4 collision. So what happens if the customer
5 goes out there and wrecks that car? You
6 know, maybe that dealer wants to take a
7 security deposit that would cover that.

8 MR. POTEET:

9 Well, I think based on what you
10 just said, the wording is documented cost.
11 What if we had this exact same wording and
12 it said the price of the car -- the retail
13 price of the car?

14 MR. KIRALY:

15 My contracts shows that. It
16 shows every payment. It shows exactly --

17 MR. POTEET:

18 Well, that's what I'm saying. If
19 you read this provision, it would say --
20 right now, it says, no security deposit --
21 it defines what a security deposit is. I
22 don't know how you can have any other --

23 MR. KIRALY:

24 My contract defines it how you
25 get it back.

1 MR. POTEET:

2 Okay. And then your security
3 deposit shall exceed -- no security deposit
4 shall exceed 30 percent of the rental
5 dealer's price. I would get rid of the
6 documented cost. I don't understand how
7 that helps. Yes, I would think that the
8 retail price, price of the car, something
9 along those lines. And I don't know how
10 that --

11 MR. HALLACK:

12 And I think that's the original
13 language.

14 MR. POTEET:

15 Let's get rid of documented
16 costs.

17 MR. DUPLESSIS:

18 Will that cure it?

19 MR. KIRALY:

20 I think that would be fair, but
21 one note on that. When you said that some
22 dealers aren't required to get comp and
23 collision, I've had many instances where I
24 require them all to get it. They write a
25 check on Friday for their insurance. If

1 they get in a wreck that check bounced, they
2 don't -- the insurance company doesn't cover
3 anything.

4 MR. WISENOR:

5 That is what they have contingent
6 liability for.

7 MR. KIRALY:

8 No contingent liability is to
9 protect the dealer.

10 MR. POTEET:

11 All right. Let's change that
12 wording.

13 MR. HALLACK:

14 Go back to the way the law was
15 written.

16 MR. POTEET:

17 The retail price. Is that
18 acceptable to everybody in this room, retail
19 price?

20 MR. HALLACK:

21 On that one, yes.

22 MR. POTEET:

23 What else, do you have another
24 one? Do you have anything else you want
25 discuss?

1 MR. STROBERT:

2 The 30 percent, though, I mean,
3 the question is on the security deposit
4 side. So it's not necessarily the down
5 payment side.

6 MR. POTEET:

7 No. It defines security deposit
8 and it's completely separate.

9 MR. STROBERT:

10 Where did y'all come up with the
11 30 percent on the security deposit?

12 MR. HALLACK:

13 You know, originally when we
14 started developing this law about 10 years
15 ago, Butch Wright was adamantly opposed to
16 setting a number. And so it was written --
17 like Ms. Morris said, we're just going to go
18 back to the old language, whatever that is.

19 MR. POTEET:

20 I think the 30 percent is a
21 number that might be --

22 MR. HALLACK:

23 Not to exceed.

24 MR. POTEET:

25 Yes. And I think that that

1 number kind of gets across all of the
2 objections.

3 MR. HALLACK:

4 It was discussed in the
5 legislative committee if you want to know
6 where it came from.

7 MR. TAMBLING:

8 They were wanting to know why
9 they were being capped at the 30 percent.

10 MR. HALLACK:

11 Now, remember, that's not a cap
12 on down payment. You can take any down
13 payment you want.

14 MR. POTEET:

15 It's just a security deposit.

16 MR. STRODERT:

17 The question is, why you are
18 taking a security deposit?

19 MR. HALLACK:

20 Only for -- like Mr. Kiraly said,
21 he has comp and collision. Maybe the dealer
22 wants a little fund there in case the
23 customer wrecks the car or has extraordinary
24 damage, you know, or drives it to LA and
25 back every week or something like that, you

1 know.

2 MR. KIRALY:

3 When we first started this in
4 '99, we didn't require all --- I didn't
5 require all dealers. You know, some of the
6 dealers couldn't afford it. But as things
7 evolved, as the economy got better, as the
8 cars that were on the program, everything
9 just changed. You know, we learned from the
10 progression of -- you know, don't put the
11 clunkers out there, because the clunkers --
12 you get them back and you're defeating your
13 purpose. Whereas, now, when I go in with
14 these consumers, I may have \$6,000 in a car
15 that they put up \$2,500 down. So I'm in bed
16 with them and these people -- I'm indebted
17 for six months before I can break even. So
18 that would be a reason to have that security
19 deposit in place, which is what we did, but
20 I do understand what you're saying on the
21 verbiage and I can change my contracts to
22 that. So we have no problem with that.
23 It's just I was worried about the number we
24 were putting.

25 MR. POTEET:

1 I think the 30 percent is
2 probably going to be driven by the
3 Legislature a little bit. I mean, I think
4 -- to me there's some -- I don't know what
5 the number is, but there's some number
6 that's going to make people unhappy with
7 this. If you put 50 percent, 70 percent, it
8 looks like you're gouging the consumers. If
9 you have the number too low, it looks like
10 they're not getting anything. I'm just
11 thinking 30 percent sounds like some kind of
12 a happy medium that over the years is --

13 MR. DUPLESSIS:

14 Sellable.

15 MR. HALLACK:

16 But what we're saying is that
17 we're going to make an amendment to this
18 bill saying retail price of the car, whereas
19 the --

20 MS. MORRIS:

21 Which is higher than the cost.

22 MR. POTEET:

23 Yes. And you're going to have --
24 you know, if your car is \$9,000, you're
25 going to get 30 percent back, not your --

1 MR. STROBERT:

2 Up to 30 percent.

3 MR. POTEET:

4 Up to 30.

5 MR. DUPLESSIS:

6 That's 3,000. So just think of
7 it this way. So this is kind of your -- you
8 know, your cushion in case of repossession.
9 And I think it's probably technically
10 according to Federal Trade Commission
11 illegal to take a deposit on a rent to own
12 car.

13 MR. KIRALY:

14 And I try to get at least 50
15 percent of my cost in the vehicle when I'm
16 doing rent to own.

17 MR. POTEET:

18 Okay. What other -- what else do
19 we have? You have some other comments?

20 MR. DUPLESSIS:

21 Anything else on 533?

22 MR. KIRALY:

23 The numbers on the authorizing
24 the rental dealer for aiding a rental dealer
25 to be struck out committed each, that means

1 we can go ahead and commit with? That's the
2 question I've got on that.

3 MR. HALLACK:

4 Well, you've got to remember that
5 has absolutely no meaning whatsoever. It's
6 just crazy language that has to be removed.
7 How it got in our law in the first --

8 MS. MORRIS:

9 Well, that's old and I think
10 that's before there was a repossession
11 process. That's old language.

12 MR. HALLACK:

13 But it's not -- we're not telling
14 them that they have to adopt a repossession
15 process. All you've got to do is have them
16 in default before you repossess the vehicle.

17 MR. KIRALY:

18 Okay. And my other question is
19 when it says -- on the default, it says you
20 have five days of mailing a notice of
21 default or actual notice of default. Does
22 that mean verbally?

23 MR. DUPLESSIS:

24 Verbal.

25 MR. KIRALY:

1 The only problem I have with this
2 and the time I really go after a car and
3 immediately drop the hammer is when that
4 insurance is expired. And I had very bad
5 scenario where we went to get a car down in
6 Terrebonne Parish. They told us -- the
7 police officer told my repo man if he came
8 -- got back in the yard, he was going to
9 have him arrested. He tried to put me on
10 the phone and I could hear the officer
11 saying he didn't give a whatever about who I
12 was. Two days later, the person that we
13 sold it to, boyfriend was driving and hit a
14 van broadside severely injuring two
15 children. If that vehicle would have been
16 off the road because of non-insurance, it
17 would be -- you know, this wouldn't have
18 happened. And that was the only time that
19 we tried -- you know, I work with them on
20 down payment. I work with them on
21 everything. I move everything around with
22 them, but insurance is one of the things
23 that we have a problem with. Especially
24 with contingent liability. I have to make
25 an effort to get it. It states by the

1 contingent company that I have to make an
2 effort to go get this vehicle.

3 MR. POTEET:

4 Well, do you want something in
5 there about that, about insurance?

6 MR. HALLACK:

7 No. Well, default is not having
8 --

9 MS. MORRIS:

10 Default includes not having --

11 MR. KIRALY:

12 I've got to wait five days --

13 MR. POTEET:

14 Well, that's what it's pointing
15 to.

16 MR. HALLACK:

17 He's got to wait five days before
18 he repossesses the vehicle?

19 MR. DUPLESSIS:

20 Yes. That's the way it's
21 written.

22 MR. HALLACK:

23 Do y'all think that's a bad
24 provision?

25 MR. POTEET:

1 No. It's only insurance.

2 MR. DUPLESSIS:

3 Well, with his testimony, it
4 clearly is a bad provision.

5 MR. KIRALY:

6 Very bad.

7 MR. DUPLESSIS:

8 I don't think it serves anybody.

9 MR. POTEET:

10 Only because of the insurance.

11 MR. KIRALY:

12 There's no entity in Louisiana
13 that finances cars that polices them for the
14 insurance better than a good rent to own
15 dealer. We try to call these insurance
16 companies all the time.

17 MR. HALLACK:

18 I'm --

19 MR. DUPLESSIS:

20 We got it. What do y'all think,
21 because we'll be here all day discussing it.
22 I think it was one of those great ideas we
23 had without all the intended consequences
24 when we discussed it.

25 But, Mr. Kiraly, that's why we

1 have you here and we're listening to you
2 today.

3 MR. HALLACK:

4 Well, we've got to get rid of
5 that provision that says something about
6 repossession 14:220. That makes no sense
7 whatsoever. It has never made any sense.
8 Repossession in accordance with --

9 MR. DUPLESSIS:

10 I agree with that. I mean, we're
11 addressing it right now. Let's keep it in
12 order of the specific insurance issue you
13 brought up, because I think that's a real
14 issue.

15 MS. BARON:

16 Could you put the five days,
17 within five days of the delivery of notice
18 except in the case of cancelled insurance?

19 MR. HALLACK:

20 Time out. By law, he's required
21 to send the customer a letter of default.
22 Okay.

23 MR. DUPLESSIS:

24 We've got two issues. We have
25 payment and we have payment of insurance, to

1 totally separate thresholds --

2 MR. HALLACK:

3 They're covered in one statute.

4 MS. MORRIS:

5 They are.

6 MR. HALLACK:

7 They are.

8 MS. MORRIS:

9 Lapse of insurance is an event of
10 default this allows you to repossess the
11 vehicle.

12 MR. DUPLESSIS:

13 Right. And the statute, as it's
14 written right now, requires the dealer to
15 put the customer on notice of default,
16 whether it's nonpayment or lapse of
17 insurance. He's required by law, as it is
18 written right now, to put him on notice of
19 default. All we're saying is, during that
20 time, he cannot repossess that vehicle and
21 we're talking about five days. Well, that's
22 a bad five days.

23 MR. HALLACK:

24 Well, you've got 10 days. You've
25 got 10 days from the notice of cancellation.

1 MR. KIRALY:

2 You can't get in there and fix
3 with the exception of default of insurance?

4 MS. MORRIS:

5 But the insurer can't cancel --

6 MR. HALLACK:

7 That's not the whole statute.

8 MS. MORRIS:

9 -- but the insurer can't cancel
10 the insurance.

11 MR. HALLACK:

12 Well, let me get the statute, but
13 I promise you it's in there. It says the
14 dealer must put them on notice of default
15 for non-payment --

16 MR. POTEET:

17 I don't think we're arguing that
18 point. What we're trying to figure out is
19 the situation he's talking about where they
20 have no insurance.

21 MR. HALLACK:

22 But you're not without insurance.

23 MS. MORRIS:

24 But the insurer has to notify
25 you.

1 MR. HALLACK:

2 No, he's on -- he knows.

3 MS. MORRIS:

4 Correct. And so the insurance --
5 at the time the notice of cancellation comes
6 out, it's not, in fact, cancelled.

7 MR. HALLACK:

8 That's right.

9 MR. KIRALY:

10 If they write a bad check and
11 they give me the check for payment and that
12 check bounces, they have no insurance.
13 There is no grace period with the insurance
14 company, none. We have to find out through
15 our sources when we're checking these
16 people's insurance. We call -- I have girls
17 that do that, to check and make sure. I
18 mean, we're checking on Friday, they have
19 insurance. On Monday, they don't have
20 insurance, you know, on Monday afternoon.
21 Sometimes by the time we get the notice,
22 they've already had their notice. So does
23 the notice from the insurance company work
24 in lieu of my notice?

25 MR. HALLACK:

1 This is the most incredibly
2 dealer friendly repossession you could ever
3 imagine. All we're trying to do is, we're
4 trying to clarify it and make it to where
5 it's a workable deal.

6 MR. POTEET:

7 I understand that.

8 MR. DUPLESSIS:

9 We're all there. We're all
10 there.

11 MR. POTEET:

12 We're all there.

13 MR. HALLACK:

14 It's not workable, right now.

15 MR. POTEET:

16 You're right.

17 MR. HALLACK:

18 It's meaningless.

19 MR. DUPLESSIS:

20 Well, because the police officer
21 interfered with that process, they also
22 could have liability and we're trying to
23 find -- and, Mr. Kiraly, I think you are the
24 epitome of ethics in the rent to own
25 business. Some of your colleagues may not

1 be quite to the level you are at. So we're
2 faced as a Commission with balancing the
3 scales between ethics, the consumer, and
4 federal law, and what we think is the best,
5 and I'm kind of thwarted on this one.

6 MS. MORRIS:

7 Mr. Kiraly is maybe saying that
8 the first payment bounces, because if you
9 have one payment if you are bound for
10 coverage, they can't cancel you that
11 quickly, because the insurer has to send you
12 a notice of cancellation and you, in fact,
13 have insurance for a period longer --

14 MR. DUPLESSIS:

15 It's 10 days normally.

16 MS. MORRIS:

17 -- to pay, and then you have
18 continuous coverage.

19 MR. BREWER:

20 We can eliminate that by having
21 the customer pay cash for his insurance.

22 MS. MORRIS:

23 A money order or certified check.

24 MR. DUPLESSIS:

25 Well, I don't know that that's

1 practical in the normal scheme of business
2 for every consumer. While I think some of
3 his clients probably do have money orders,
4 you know, if you ask an average person who
5 has a checking account and things are tight,
6 they can occur. So I'm not sure that
7 sending everybody down to either the post
8 office or the convenience store to get a
9 money order --

10 MS. MORRIS:

11 I'm not even sure if the insurer
12 can cancel it if the check bounced, because
13 if they have -- they have to go back and
14 check on the funds.

15 MR. HALLACK:

16 See what the law says default
17 means. Default means the failure of a
18 rental customer to bring the rental account
19 current within five days after the rental
20 payment is due or the failure of the rental
21 customer to maintain minimum insurance
22 required pursuant to a rental purchase
23 agreement. So you can put them in default.
24 The law clearly says that's the reasons for
25 default. All this says is that you've got

1 five days after you put them in default that
2 you can't repossess the vehicle. You've got
3 to give them five days' notice.

4 MR. TAYLOR:

5 I believe any financing entity in
6 the world, I believe they'll give them more
7 than five days to get these people up and
8 going. I believe what you believe, this is
9 very fair.

10 MR. HALLACK:

11 Yes. I don't know if they're
12 saying that they don't want any notice at
13 all before repossession. Is that what y'all
14 are saying?

15 MR. STROBERT:

16 I think what I'm concerned -- and
17 tell me if I'm wrong -- is there's a concern
18 that if the insurance lapses and the
19 customer or the consumer has no insurance,
20 that means that if they drive that vehicle
21 for the next five days, it cannot be picked
22 up and repo'd. They drive that vehicle and
23 something happens in that five-day period,
24 the liability turns to the dealer and the
25 dealer is basically saying, hey, that's fine

1 on the five-day default to give them an
2 opportunity for payment, if that's the way
3 the law would read, but for insurance
4 purposes, you have a five day window that
5 you've got to pray to God that that renter
6 is not going to drive that vehicle and go do
7 some sort of damage that would put the
8 dealer at some sort of liability.

9 MR. HALLACK:

10 Okay. The customer is supposed
11 to be provided with notice of cancellation
12 from the insurer. According to that notice
13 of cancellation, it's my understanding the
14 notice also goes to the owner of the
15 vehicle. So the dealer is supposed to get
16 that notice of cancellation, also. Am I
17 right?

18 MR. KIRALY:

19 That's the way it's supposed to
20 the work, yes.

21 MR. HALLACK:

22 Right.

23 MR. KIRALY:

24 But they don't send you one all
25 the time. They really don't.

1 MR. HALLACK:

2 But I've talked to Dave before.
3 I've talked to several other rent to own
4 dealers and they're on some kind of database
5 and they know immediately when somebody has
6 --

7 MR. STRODERT:

8 What most dealers do that we've
9 run across through the state association is
10 they will create a -- when I pay my last
11 payment, and then there's another date that
12 says they are due on this date the insurance
13 and what a dealer like Mr. Kiraly would do
14 is, they will pick up the phone and clarify
15 their insurance to make sure that that
16 renter is not driving around without
17 insurance. And the dealer would also have
18 to go one step further and they'll go to try
19 to disable using GPS devices inside of the
20 vehicle so that vehicle is not moving. So
21 the dealer doesn't have the liability.

22 MR. HALLACK:

23 But you see my point is, if
24 you're aware -- if you receive notice,
25 whether you get the notice of cancellation

1 from the insurer or if you get something
2 from like a database or something to the
3 effect that right then, there's no
4 insurance, then you need to put the customer
5 in default in accordance with the law. You
6 know, that's what you've got to do. This
7 just says -- then you've got five days
8 before you can go get it. So if you get a
9 notice of cancellation, which gives
10 everybody a 10-day grace period -- and that
11 is the law. That's not happenstance. They
12 are given a 10-day grace period. We're
13 inside 10 days at five days. So if you get
14 that notice of cancellation like they're
15 required to give you or if you see it on a
16 database, then you've got to know that
17 you've five days to -- before you can go get
18 that vehicle. You just can't immediately
19 run out there and get it.

20 MR. KIRALY:

21 I don't do it that way. That's
22 using your scenario.

23 MR. DUPLESSIS:

24 That's correct.

25 MR. TAYLOR:

1 If we're doing it this way, we
2 are setting it up for people to do snatch
3 and grab on the first day, I don't think
4 that's right.

5 MR. DUPLESSIS:

6 Let's try to wrap this up. I
7 think, number one, that you guys can pay the
8 payment, which if I was in your shoes, I'm
9 not sure I would want to do it, and then you
10 could get a reimbursement on that. The
11 other thing we can do is maybe change the
12 language on notification and putting them in
13 default and I think that could be by e-mail.
14 That could be -- let's face it, that's the
15 way y'all notify your customers today.

16 MS. MORRIS:

17 Well, that's why we have actual
18 notice. You can deposit the certified mail,
19 so you will have a record of it, but if you
20 can actually notify them, you still have to
21 approve.

22 MR. DUPLESSIS:

23 Do we have a definition of
24 notice?

25 MR. KIRALY:

1 It could be two weeks.

2 MS. MORRIS:

3 You would have to change it to
4 say certified mail.

5 MR. HALLACK:

6 It doesn't say certified mail in
7 the law. I don't know what it says.

8 MS. MORRIS:

9 It says notice by mail. If you
10 just put it in the regular mail, you're not
11 going to have any proof that you did it.
12 You're going to have to have proof of
13 mailing or certified mail.

14 MR. DUPLESSIS:

15 Do we have a definition of
16 notice?

17 MS. MORRIS:

18 It says it's five days of the
19 letter of mailing of the notice of default
20 or actual notice. So actual notice could be
21 if the customer came to you and you had a
22 conversation with them, if you texted them.

23 MR. HALLACK:

24 The day of mailing --

25 MS. MORRIS:

1 If it comes down to this --

2 MR. HALLACK:

3 Right.

4 MR. DUPLESSIS:

5 Keith made a good point. We'll
6 go for a text or an e-mail.

7 MS. MORRIS:

8 Or a telephone call, but you have
9 to have proof of it if you're arguing this
10 point.

11 MR. HALLACK:

12 Well, we're not trying to make
13 this difficult for the dealer.

14 MR. KIRALY:

15 I am not trying to make it
16 difficult either, because it's just as vague
17 to me. You know, I'm looking at it. I need
18 to know what the rules are. I'll play the
19 game by the rules.

20 MR. DUPLESSIS:

21 I don't think anybody is
22 defending this. This is one of the things
23 that this is a legislative process. You
24 argue a lot at that point, but I think we've
25 kind of made -- have we made the point?

1 MR. HALLACK:

2 We're not making any changes,
3 right?

4 MR. DUPLESSIS:

5 I think we've clarified, Mr.
6 Kiraly and Derek and everybody in NIADA what
7 to disseminate to your constituents, which
8 is -- you know, our clients as well, exactly
9 what they should tell them to do and that
10 would be text would be legal, an e-mail, a
11 phone conversation, but you have to retain
12 proof and records, because you have 10 days
13 to cure within the notice of insurance, the
14 business y'all are in are to keep the
15 insurance up, but we're not saying you've
16 got to go past five days. You put them in
17 default. You're in default, you have five
18 days to cure in the period and if don't do
19 it, we're going to get the GPS and we're
20 going to come get your car and/or both or
21 all of the above. So we're on your side,
22 but we have to be on the consumer side and
23 be able to settle this.

24 MR. STRODERT:

25 And I don't mean to be dragging

1 this any further, because I think you need
2 to close this thing out, but on the
3 notification of default. Can we initiate
4 the GPS device to shut down a vehicle?

5 MR. DUPLESSIS:

6 Five days.

7 MS. MORRIS:

8 This does not address disable the
9 car. This is physically repossessing the
10 car. So I don't think this precludes from
11 disabling it.

12 MR. HALLACK:

13 You can't just disable it.

14 MS. MORRIS:

15 If you don't have possession of
16 it, you're going to do any damage.

17 MR. POTEET:

18 The law says you can't do that.

19 MS. BARON:

20 So you can disable it the same
21 day you --

22 MR. POTEET:

23 You can disable it, you can't go
24 get it.

25 MR. GUILLORY:

1 I would put this to where, in my
2 simple mind, it's real easy to understand.
3 It's no different if you kill that vehicle,
4 because you know they're in -- that's
5 especially putting a dealer in liability.
6 It's no different than a trooper stops you
7 and you don't have insurance. He's not
8 going to give you five days to get your
9 stuff right. He's going to take that
10 vehicle right there on the spot.

11 MR. STROBERT:

12 I think that's the big concern.

13 MR. POTEET:

14 I think the interpretation of our
15 attorneys is you can disable it, which would
16 stop, you know --

17 MR. TAYLOR:

18 That disabling is in your
19 agreement. This don't mention anything
20 about disabling.

21 MR. POTEET:

22 I think those two things are
23 distinct enough that you don't need to be
24 concerned about that. Go ahead and disable
25 it on day one, but don't go get it.

1 MS. MORRIS:

2 Your contract needs to say
3 clearly that it's equipped with a GPS device
4 and if you fail to pay -- if I have evidence
5 the car is uninsured, it's going to be
6 disabled.

7 MR. HALLACK:

8 It would make the disabling
9 device even more important.

10 MR. KIRALY:

11 The only problem with telling
12 them about the GPS in my car that's
13 registered to me, they're going to --

14 MR. HALLACK:

15 You don't need to let them know
16 that you have a disabling device.

17 MR. TAYLOR:

18 You do need to let them know.
19 You have to.

20 MR. POTEET:

21 If they disable it and if they do
22 something to it, don't you know it.

23 MR. STROBERT:

24 Yes. Then, you're going to back
25 and it is the same thing as being in

1 default, because through the contract it's
2 going to state something --

3 MR. POTEET:

4 I think there's some point where
5 -- I mean, you get down to -- it's like a
6 bell curve. I mean, you're going far and
7 far enough out, we're going to find it, an
8 example that somebody is getting around
9 this. I think we've got to go with where,
10 you know, the --

11 MR. STRODERT:

12 One thing that I would say on
13 that, so basically if I'm a rent to own
14 dealer and my renter on Friday afternoon,
15 the insurance is done. So I get that
16 notification. I basically initiate the GPS
17 and hopefully it works and the car is not
18 hidden or its somewhere why it didn't work
19 and they didn't take it out already so
20 between that Friday, there's no insurance on
21 that the vehicle and they drive that
22 vehicle, I have until Wednesday, praying to
23 God that nothing happens to it between
24 Friday and Wednesday, and basically there's
25 no liability issue. I'm only just saying t

1 his, because it's going to come up with the
2 dealers. And so basically we say, yes, for
3 those five days, you are at risk, you cannot
4 go pick up that car.

5 MR. POTEET:

6 Or pay the premium.

7 MR. STROBERT:

8 Or pay the premium.

9 MR. POTEET:

10 It's back to what Mr. Taylor said
11 a few minutes ago, you've already got a
12 dealer friendly rule. You put the due day
13 on day one, you're not going to have any
14 kind of rules. It's going to go the
15 opposite way. Somebody is going to say, I
16 don't know what you guys are trying to pull
17 over on us, but let's make it 30 days.

18 MR. TAYLOR:

19 Do you think what we are writing
20 this year would be bad, what somebody else
21 writes in to oppose this, It would be bad.

22 MS. MORRIS:

23 It's consumer protection. So
24 they're --

25 MR. POTEET:

1 Yes. I mean, they're already on
2 the consumer side. So the point would be if
3 we make it any more liberal towards the
4 dealer, it's going to get -- it's going to
5 create --

6 MR. STROBERT:

7 End up getting pushed back.

8 MR. DUPLESSIS:

9 And, of course, they're not going
10 to come to this committee to write the law.
11 They're going -- y'all are going to be down
12 there and we're caught in the gap, because
13 we can't lobby for you. I think y'all
14 better, you know, try to define it and
15 disseminate the knowledge as best you can to
16 the committee before you go down there and
17 all sit at the table all unorganized, take
18 this one and run with it.

19 MR. POTEET:

20 And Ms. Morris' point, I think,
21 you know, whether you think it's a good idea
22 or not or it's expensive, pay the premium.
23 If that's what you're concerned about, pay
24 the premium for them, and you're going to
25 get it back later.

1 MR. HALLACK:

2 The purpose of the contingent
3 liability coverage was supposed to cover the
4 dealer during that period, right?

5 MR. POTEET:

6 All right. Guys, have we got
7 anything else on legislative?

8 MR. DUPLESSIS:

9 Well, yes, we have the recital
10 of -- Do you want to cover that, by the New
11 Car Commission?

12 Well, on April 2, which I believe
13 was Thursday, a committee of us went down to
14 New Orleans to meet with the New Car
15 Commission and we had -- that delegation was
16 Mr. Parnell, myself, Mr. Poteet, Ms. Morris
17 and Mr. Taylor.

18 MR. TAYLOR:

19 Is it okay if we get a copy back
20 here?

21 MR. POTEET:

22 Sure.

23 MR. DUPLESSIS:

24 And there was a gentleman from
25 the Governor's Office, and he's with the

1 Board of Commissions, which falls under the
2 Administrative Procedures Acts of the
3 Governor's Office. We basically went down
4 and we were going to bring the case of the
5 finance license to their light. And, you
6 know, I always thought that you should have
7 an expectation of a meeting when you go in
8 and hopefully your expectations when you
9 leave. Well, I think mine were satisfied on
10 both ends. I felt like the New Car
11 Commission -- we started off in a forum and
12 Ms. Morris brought together the points of
13 law, which we think are vague and may be not
14 necessarily in their favor and not clear.
15 She brought the points of law and I believe
16 they were, at some point in time,
17 questioning our motivation and I think they
18 thought it was about revenue. Well, I
19 looked around the table and none of us were
20 on the commission for the revenue and we
21 weren't getting anything out of it. I think
22 my comments were to try to do something
23 noble. We were looking at the way the
24 boards and commissions are situated with
25 their scheme of law and basically the

1 Administrative Procedures act is properly
2 stated in the Constitution and by statute,
3 that there was no representation. There was
4 a large fee, by which it didn't have -- it
5 didn't seemingly have a lot of published
6 guidelines and it didn't have an educational
7 program that was attached to it. And my
8 point was that while they continue to govern
9 finance companies such as FHA and, I guess,
10 Santander, GMAC, Ford Motor Credit, those
11 companies were national scope, and for new
12 car dealers, being one, there's a lot of
13 information. We have NADA. We have LADA,
14 and we have a tremendous amount of mandatory
15 requirements by GM Financial, Capital One,
16 Chase, and Allied. They have seminars for
17 us with the new federal credit bureau that's
18 going around inspecting and that NIADA and
19 LIADA does not have the resources and they
20 don't have the presence of those -- of the
21 lenders of that nature to disseminate all of
22 the credit -- all of the credit information,
23 TILA, Z, Regulation M. It just goes on and
24 on and on. Everything with the federal
25 bureau of credit that is out. And they

1 really didn't want to address that to a
2 great degree and that's maybe a point that,
3 Sheri, you can speak to later, but I felt
4 like we were to some degree belittled and I
5 was very uncomfortable in that. I think we
6 were all uncomfortable. Were we prepared
7 for the meeting? No. If we would have
8 gotten together and spent maybe a weekend in
9 seclusion, I don't think we would have been
10 prepared for the meeting that took place.
11 And I thought it was a bit unprofessional
12 and at the end of the day, they told us that
13 they would take it under advisement.

14 Well, this doesn't really fall
15 under their commission. It also falls under
16 the scheme of the laws of the boards and
17 commissions and the Administrative
18 Procedures Act. After it was over, I
19 personally felt a little shallow and I think
20 the rest of my colleagues and Commissioners
21 did as well. So I think we were
22 disappointed. I don't know what more we
23 could have done in retrospect, but I did ask
24 Sheri to write a recital, which I believe
25 that you have now, and I think that you've

1 probably heard enough from myself on the
2 issue and I would like the other
3 Commissioners maybe and legal counsel to
4 speak about it. Not to put anybody on the
5 spot.

6 MR. POTEET:

7 Well, you know, my feeling was
8 that they -- they were -- what's the old
9 saying, they were loaded for bear when we
10 walked in the door and I don't think that
11 they -- I'm not sure what they think our
12 real motive was, but they expressed that
13 they thought our motive that it was a
14 revenue grab. I can assure everybody in
15 this room, this is not a revenue grab. We
16 don't need the revenue. We're doing fine
17 where we are. We're concerned about our
18 dealers and we're concerned about the
19 consumers. So, you know, as we sat through
20 that meeting and talked about some of the
21 things that, to me, became obvious, number
22 one, everybody -- whether you're a new car
23 dealer or a used car dealer, you're under
24 the same guidelines, except for the
25 exemptions allowed for the new car dealers.

1 So it's like here's the law for all of us to
2 follow and, oh, by the way, you guys don't
3 really have to follow all these things. So
4 at the end of the meeting, I did make that
5 comment, but I think it was so far down at
6 the end that nobody either heard it or
7 didn't really feel like they needed to
8 respond, but I just said, why don't you just
9 give us all the same exemptions that you
10 give your own new car dealers and call it a
11 day? That's not really what we were
12 shooting for, per se, but it did kind of
13 bring up the point that this is not the
14 same. You're saying that you're regulating
15 your dealers and our dealers the same, but
16 you're not. You're not charging your guys
17 \$400. You don't have a certain number that
18 they have to do. And Sheri has done a good
19 job of kind of bringing these things
20 together, all the differences, and how used
21 car dealers are treated, and then new car
22 dealers by the same commission that's
23 supposedly regulating both. So as I read
24 through this and look at the options, things
25 are pretty -- I mean, I think this is pretty

1 fair. We're not asking for a lot. We're
2 just asking that everybody be treated the
3 same. At the very least, let's just make
4 everybody treated the same. So that's what
5 I have to say.

6 I mean, do either of one of you
7 have anything to say? Derek, you were
8 there, too.

9 MR. TAYLOR:

10 When was this Motor Vehicles
11 Finance Act written?

12 MR. POTEET:

13 1958.

14 MR. DUPLESSIS:

15 And then again in '07, I think.

16 MR. TAYLOR:

17 Outside of everything that's been
18 said that I do agree with, there's one key
19 factor and the key factor is that indirect
20 lending was a non-factor in the 50s, and so
21 why -- the first question is why we want it
22 now. You know, why haven't we had this for
23 all of those years. Well, we wouldn't have
24 fell under their guidelines back then, and
25 what we're trying to do is just govern our

1 dealers and if they're going to tie lending
2 with -- why do they need us to come aboard
3 and we're just trying to get our separation
4 there and trying to get our dealers back.
5 If they don't want them, I think that we
6 still need to have -- you know, this is an
7 important issue on a state level and I think
8 we owe it to our dealers to make sure that
9 they know what's going on out there and that
10 we should start paying a lot more attention
11 to this on our side and not depend on that
12 entity. I hope I made myself clear.

13 MR. DUPLESSIS:

14 I agree with you. If there's one
15 group of people that really need the
16 education, it's the used car side, because
17 they do not have the relationships. In
18 fact, I think a lot of what they deal with
19 it is credit. I deal with a lot of credit,
20 but it doesn't matter, because I've got
21 Allied and GM Financial and Chase and so
22 forth and I've got good education coming
23 down the pipe, but I do not see any of those
24 certifications coming through other
25 creditors. I don't know if they're extended

1 through Chase or anything else, because I'm
2 strictly new car.

3 MR. TAYLOR:

4 No, no, they are not. They're
5 not coming through our indirect lenders.
6 The only one that offers any type of
7 anything, which is Allied, you can pay to go
8 to courses with them, which I've been to
9 several of them. They're very good and very
10 helpful, but no, we're not provided what
11 you're providing.

12 MR. DUPLESSIS:

13 Well, you see they're mandatory
14 for me with General Motors and GM Financial.
15 It's a violation of our dealer agreement not
16 to attend -- be certified and actually have
17 a plan in place, a very simple plan, but in
18 regards to privacy, HIPAA, it's pretty --
19 it's pretty strict. It's down to locking
20 the door of the finance office, documents
21 sitting on the receptionist's desk that's
22 working a new car file. It's at that level
23 and do we do it? You better do it, because
24 you never know who's going to come in and
25 you don't want that to get out. You don't

1 want to have an adversarial relationship
2 with your lenders. The credit unions, on
3 the other hand, I do not believe -- I've
4 never seen anything come across my desk or
5 my computer, my e-mails, that would -- that
6 would indicate that there's that level of
7 education compliance, concern, and
8 development of a plan for a used car dealer.
9 It's going to come down to the feds. So I
10 think that it is important. It is there for
11 education and I feel personally -- I can't
12 speak for the rest of Commissioners, but I
13 do think that it's going to become a concern
14 and I think we have an obligation to
15 regulate and they charge you a fee. I do
16 think they need to let you know what to
17 expect and that's a lot of federal
18 regulation. So I think that they're -- you
19 know, they're charged with that.

20 MR. POTEET:

21 Do you have any comments?

22 MS. MORRIS:

23 No. I think it's been very well
24 covered. They said they would take it under
25 advisement. They didn't give us a time line

1 to respond or anything. So should we do
2 some follow-up or I don't know. Where do we
3 move it from here?

4 MR. POTEET:

5 I was kind of under the
6 impression that maybe the next step would be
7 for Derek to get back with them and try to
8 get this to the level where it's actually
9 mediated. Does that sound right?

10 MR. DUPLESSIS:

11 Yes.

12 MR. POTEET:

13 I don't know how else to word
14 that, but we have our position. We think
15 we're right and obviously they have their
16 position and they think they're right. So
17 somewhere along the line, I don't think that
18 this is -- I think we all agree with this,
19 that we don't think it's a legislative
20 option, at least not at this point.

21 MR. DUPLESSIS:

22 Not this year, not in the fiscal
23 session.

24 MR. POTEET:

25 It would result in a larger fight

1 I think. So I think the next steps is to
2 have somebody at the Governor's Office on
3 board with the Commission to sort of mediate
4 it a little bit, at least look at it and see
5 -- you know, if we're wrong, I would like
6 somebody to tell me that we're wrong, other
7 than the people over at the LMVC. So that's
8 my position.

9 MR. TAYLOR:

10 Who's governing again?

11 MR. POTEET:

12 That was the man that was there
13 at that meeting. But he was not there to
14 make any decisions. He was only there to
15 observe.

16 MR. DUPLESSIS:

17 Well, LAIDA probably would do
18 what they want with the legislative scheme
19 of law. My personal recommendation, and I
20 think my fellow Commissioners, along -- as
21 well as Sheri who has a lot of legislative
22 experience would urge you to not take this
23 up in session. I think with cool heads,
24 this plan will prevail. I don't think that
25 it would behoove you or anyone else to try

1 and bring something to this legislative
2 session. That's just a word of advice.
3 Now, after the session.

4 MR. POTEET:

5 I agree with that. I think we've
6 got -- you know, it's sort of -- you take
7 certain steps and we don't want to get too
8 far along, because we don't want it to
9 explode. We want -- Mr. Kiraly is here. I
10 thought we did a pretty good job of working
11 that thing over with the insurance the way
12 we did it. It wasn't -- we did it slowly
13 and eventually we won the battle, but I
14 think if you go in there and cause an
15 explosion, it can result in a lot of
16 problems down the road. This is the best
17 step. If we can't achieve anything through
18 the Governor's office after this session,
19 then we jump in and we start thinking about
20 next year's session.

21 MR. DUPLESSIS:

22 Mr. Chairman, that concludes my
23 report.

24 MR. POTEET:

25 All right. Any other comments

1 for today, anything that we need to be
2 thinking about for the next meeting at this
3 point in time, items for the next agenda?
4 The next meeting will be May 18th. All
5 right.

6 MR. FLOYD:

7 Well, I would like to bring
8 something to light.

9 MR. POTEET:

10 Okay.

11 MR. FLOYD:

12 I have a dealer that contacted me
13 and I'm also in the same situation. When
14 you pay for a vehicle at the auction, the
15 title doesn't come in and you've floor
16 planned the car, you've sold the car, and
17 now you're paying interest to the floor
18 planning company. Who is truly at fault --
19 when you buy a car at the auction, we're
20 penalized a late fee for not paying on time.
21 So shouldn't -- should the seller of that
22 vehicle be penalized or the auction be
23 penalized when the title is not available?

24 MR. CORMIER:

25 I thought it started when the

1 title, that is your floor plan.

2 MR. POTEET:

3 At my auction -- I can only speak
4 for my auction, specifically. At my
5 auction, there is a remedy, actually the
6 National Auto Auction Association and
7 Auction insurance has a remedy that is to
8 bring the vehicle back. We've already
9 discusses this. You're not supposed to sell
10 the car without a title. Am I right? No
11 matter where you buy the car or how you buy
12 the car, the statement you've made is that
13 you sold the car and you didn't know where
14 the title is, you're already in violation of
15 the Commission. So the remedy at the
16 auction is, if you buy a vehicle here --
17 because you've got to remember, where do we
18 get our titles? We get them from the seller
19 and the legal transaction is between the
20 seller and the buyer. The auction is a
21 facilitator, but we're not legally
22 responsible for that title unless we do
23 something to mess it up in some way, we lose
24 it, we damage it, you know, we don't fill it
25 out properly. So as a buyer, your question

1 really gets to the point as to what can we
2 do to make sellers get the titles to us in a
3 timely manner.

4 MR. FLOYD:

5 Correct.

6 MR. POTEET:

7 Trust me, I would love to have
8 some kind of law that required the seller to
9 get the title to the auction within X number
10 of days, because except in rare instances, I
11 don't make any money until the transaction
12 is completed. I don't get my buy fee or my
13 seller fee until the title comes in and I
14 present it to the buyer. So in answer to
15 that question, if you're at a little bit --
16 when you're buying from another dealer,
17 whether you're buying directly from that
18 dealer or you're buying through an auction,
19 you're taking their word that they're going
20 to have the title to you within a certain
21 period of time. And the only thing that the
22 auction can do is to say, bring the vehicle
23 back. That's why in most of our -- the
24 rules and the rules anybody follows through
25 AAA, one of the first things that's said is

1 when you get a vehicle from the auction, do
2 not do anything to it, because the title may
3 not come to you. So I don't think that
4 answers your question to say is there a
5 remedy, but I can say that from the
6 standpoint of what are your rights, your
7 rights are limited to when you get that
8 title.

9 MS. BARON:

10 If a dealer sells a car to you --
11 or gives the car to you to auction off,
12 shouldn't they be under the 20 day rule just
13 as well?

14 MR. POTEET:

15 No, they're not.

16 MS. BARON:

17 They're not?

18 MR. HALLACK:

19 It's not a retail sale.

20 MR. POTEET:

21 It's not a retail sale.

22 MR. DUPLESSIS:

23 Well, then on your draft, your
24 instructions on your draft, just have to
25 write in your instructions not to honor the

1 draft until the title is presented. That's
2 your -- that's a cure. That's why they have
3 instructions on your draft.

4 MR. BREWER:

5 Some auctions have a mileage --
6 if you put over 500 miles on it, you know,
7 you can't bring it back.

8 MR. POTEET:

9 Or we'll charge you for it.

10 MR. BREWER:

11 But all dealers that sell cars
12 that don't have the titles, well, you just
13 caught every once in a while.

14 MR. FLOYD:

15 Well, I called the auction and
16 they've called the dealer and they don't
17 call back. They say, we've trouble with
18 this dealer. When you have trouble with a
19 dealer, what can be done? Numerous calls,
20 calls, calling, calling, calling. This is a
21 big dealer in Baton Rouge, so.

22 MR. POTEET:

23 Well, you're talking about -- I
24 mean, you're talking about the difference
25 between the law and just the every day

1 process of doing business. You know, that's
2 like if you get a bad meal in a restaurant
3 five times in a row, why do you keep going
4 back to that restaurant? I mean, if you've
5 got a dealer that doesn't get titles to you
6 on time -- at our auction -- I mean, most of
7 our buying dealers that are there on a
8 regular basis can go around the room and
9 say, this guy gets the titles on time, this
10 guy never gets them on time, this guy you
11 never know what is going to happen, this guy
12 loses titles. So most of my buyers know
13 that and that's why within the auction
14 arena, we don't allow the transaction to go
15 through until the title comes. In other
16 words, we're not making you pay. We hold
17 the check, but we don't take any money out
18 of your account. We don't deposit your
19 check until we get the title.

20 MR. FLOYD:

21 Right.

22 MR. POTEET:

23 So I would -- personally, I would
24 like to see something that required dealers
25 to get titles to auctions within a certain

1 time.

2 MR. HALLACK:

3 It's a violation of the new car
4 law. And Mr. Guillory -- All Star
5 apparently has a real bad problem of getting
6 titles and -- but that's the truth, right,
7 Mr. Guillory? He had to go to All Star and
8 say --

9 MR. GUILLORY:

10 I had to go to the New Car
11 Commission to get them to assign an
12 investigator to take care of it.

13 MR. POTEET:

14 That's the issue. You're talking
15 about the New Car Commission.

16 MR. GUILLORY:

17 I will say, once I made contact
18 with that investigator for this district and
19 he went to All Star and -- within five days,
20 my dealer had his -- it magically appeared.
21 No, what happened is, I'll just say it, they
22 went and -- they finally went and satisfied
23 the lien on the car and got the title.

24 MR. POTEET:

25 There are many, many, reasons

1 this happens. And, again, I can only speak
2 for the experience I have at our auction,
3 but it's generally large new car dealerships
4 that are a problem. Used car dealers cannot
5 have this problem. They usually get us the
6 titles within a week to 10 days. Smaller
7 new car dealers tend not to have this
8 problem, but, you know, I can could name
9 names, obviously, I won't, but there's -- I
10 know which ones. When they bring cars to
11 our action, we say 60, 80, 90 days, if we're
12 lucky. We actually have sent our title
13 clerk to a specific dealership and sat down
14 and did 60 titles in one day. We did. We
15 almost had to force our way in. We said,
16 we'll just work the titles for you. And I
17 empathize, but I don't know any other answer
18 than what Nestor has just said here, is for
19 us to go to -- make a complaint to the New
20 Car Commission or get one of our
21 investigators to go and, you know, run the
22 ball for you a little bit.

23 MR. DUPLESSIS:

24 Well, let me clarify this and I'm
25 going to tell you why we have a problem --

1 the same reason I have problems. You will
2 find -- and I know All Star does business
3 with Chase. The banks now are destroying
4 the titles. They do not keep a paper file
5 on hand. They take the title. They scan
6 it. They put it into a digital file and
7 they shred the title. And then you actually
8 have to go through act of cancellation. You
9 have to pay the fee. Then, you have to
10 apply for a duplicate title and don't make
11 the mistake that I'm taking up for All Star.
12 That's not the issue. I'm just citing the
13 issues. So you might want to try to get
14 duplicate titles or something and maybe
15 you've got to visit the All Star manager or
16 whoever's auction, but that's the issue
17 we're having today.

18 MR. CORMIER:

19 Especially with Chase.

20 MR. DUPLESSIS:

21 If I am not mistaken, isn't that
22 one of the New Car Commission's licensees.

23 MR. CORMIER:

24 Yes, sir.

25 MR. POTEET:

1 Well, I mean, this is definitely
2 an issue and, you know, if -- I don't have a
3 complete answer for that. I know that our
4 auction in Houston, we've got two dealers
5 over there that they got so bad that we
6 actually convinced them not to ever sell a
7 car until they have the title in their hand
8 and we store their cars for them, and I'm
9 talking about two -- one dealership we
10 regularly have 100 to 190 cars of theirs at
11 our auction awaiting title. But they have
12 agreed not to run them and we have agreed to
13 withhold them for no charge. Now, everybody
14 is happy, because here is the problem.
15 Houston is closer to Mexico than we are and
16 guess what, a lot of our customers from
17 Mexico, come to the United States, buy these
18 cars, take them back to Mexico, and then
19 they can't get a title. You know what, if
20 any of you have ever sold a car to anyone
21 outside of the United States, whether it's
22 Canada, Mexico, Puerto Rico -- not Puerto
23 Rico, Guatemala, that's a problem. When
24 that car gets out of the country and there's
25 no title, everybody is in trouble. The

1 auction is in trouble. The seller is in
2 trouble. The buyer is in trouble. The
3 consumer at the other end, they're in
4 trouble. So, you know, I wish I could
5 convince all new car stores to not sell
6 their cars until they have a title, but
7 that's the way business is. If I made a law
8 or made a rule at my auction that way, I
9 would go out of business in a month, because
10 the other auctions wouldn't follow that. So
11 we all are on the same playing field.

12 Any other comments? Sorry I
13 couldn't help you there. Okay.

14 MR. BREWER:

15 I make a motion.

16 MR. SMITH:

17 Second.

18

19

20 (Meeting adjourned at 12:06 p.m.)

21

22

23

24

25

REPORTER'S CERTIFICATE

1
2
3 I, BETTY D. GLISSMAN, Certified Court
4 Reporter, Certificate No. 86150, in and for
5 the State of Louisiana, do hereby certify
6 that the Louisiana Used Motor Vehicle
7 Commission April 20, 2015, meeting was
8 reported by me in the stenotype reporting
9 method, was prepared and transcribed by me
10 or under my personal direction and
11 supervision, and is a true and correct
12 transcript to the best of my ability and
13 understanding.

14 This May 5, 2015, Baton Rouge,
15 Louisiana.

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25

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